UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION	No. 2:12-md-02323-AB MDL No. 2323 **Hon. Anita B. Brody**
Kevin Turner and Shawn Wooden, *on behalf of themselves and others similarly situated,* Plaintiffs, v. National Football League and NFL Properties LLC, successor-in-interest to NFL Properties, Inc., Defendants.	Civ. Action No. 14-00029-AB
THIS DOCUMENT RELATES TO: ALL ACTIONS	

[PROPOSED] ORDER

AND NOW, this __ day of _____ 2018, upon consideration of The Motion of Class Counsel The Locks Law Firm for Appointment of Administrative Class Counsel, and all responses thereto, it is hereby ORDERED that the Motion is GRANTED in the following respects:

1. The Locks Law Firm is appointed Administrative Class Counsel for the purpose of implementing the Settlement Agreement consistent with their duties under Settlement

Agreement section 28.1 and in the interests of the Class. Administrative Class Counsel shall have all the rights and duties of co-lead counsel for the plaintiffs.

2. A hearing on all issues raised by the Motion is scheduled for _____, 2018 so that the moving parties may present specific evidence raised by the Motion.

IT IS SO ORDERED.

By the Court:

_____
Hon. Anita B. Brody
United States District Judge

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MOTION OF CLASS COUNSEL THE LOCKS LAW FIRM
FOR APPOINTMENT OF ADMINISTRATIVE CLASS COUNSEL

Undersigned Class Counsel The Locks Law Firm respectfully submits this Motion for the firm to be Appointed as Administrative Class Counsel to implement the Settlement Agreement in a manner consistent with their fiduciary duty to the plaintiff Class.

The grounds for this Motion, which are more fully set forth in the accompanying Memorandum, are as follows:

1. The Settlement Agreement is in danger of failing in its execution. As advertised, it was supposed to be a method to distribute tangible benefits to diagnosed players, a safety net against brain injury and its destructive effects on Class members and their families.

2. Sadly, the Settlement is failing to provide a fraction of what the NFL promised. Of nearly 1,100 dementia claims filed to date, only 6 have been paid as of this filing, yet the NFL's projections to this Court predicted 430 dementia claims paid twelve months into implementation. Claims paid for Alzheimer's Disease fall far short of projections.

3. More than half of all claims have been placed into audit or denied, thereby causing interminable delay and preventing payments.

4. The NFL seeks to rig the Settlement system. This is part of the League's DNA. Historically, it has always engaged in scorched-earth litigation, and that is what the League is doing here, making this a Settlement in name only.

5. One year into implementation, the NFL has turned the Settlement into a secret, privately litigated claim system that involves changing standards for claim packages, inconsistent and often improper standards of review, a black hole of audits, alleged deficiencies, anonymous opinions, denials, appeals, remands, technical squabbles over what a valid diagnosis might be, and the refusal by the NFL to agree to almost any interpretation of the Agreement that will streamline and make reasonable the claims process.

6. Notwithstanding the efforts of the Special Masters and BrownGreer, reflected in part by the recent FAQs, the NFL seeks to avoid its obligations by luring BrownGreer, the AAP, and the Special Masters into second-guessing and discrediting clinical judgments made by board certified neurologists and neuropsychologists who actually evaluate retired players face to face. The NFL wants to remove these expert clinical judgments and substitute (a) the NFL's own self-serving, biased, and inaccurate diagnostic interpretations pulled out of text books; and (b) the NFL's offensive accusations that a mere modicum of functionality shown by a player undercuts

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or contradicts the diagnosis by board-certified specialists. The NFL's strategy will defeat valid claims, drive away physicians, lawyers and players, and circumvent the Court's program.

7. The undersigned Class Counsel have a fiduciary duty under Section 28.1 of the Agreement to the entire Class. In light of what has happened in the past 12 months, the undersigned seek an order from the Court appointing the Locks Law Firm as Administrative Class Counsel with the same rights and duties currently exercised by Seeger Weiss alone.

8. LLF is in a unique position. It represents approximately 1,100 registered players, has filed 102 claims, and obtained 35 awards to date. The firm knows the players, diagnostics, medical science, and Settlement process better than anyone else.

9. Based on its expertise, LLF is best positioned to defend and implement the Settlement as intended and in the best interests of the Class. The firm offers structural protection for the Class, because it understands from direct experience how every nuance of the NFL's scheme can harm, deny or set back valid individual claims of injured players.

10. LLF brings vital experience implementing many other similar settlements, including *In Re Diet Drugs*.

11. For those reasons, if the Settlement is to succeed, the Class will be best served by adding a structural protection within the administration.

12. The undersigned Class Counsel also seek a hearing on the Motion and Memorandum where it will provide evidence as the Court deems necessary.

WHEREFORE, the undersigned Class Counsel respectfully requests that the Court (a) appoint the undersigned as Administrative Class Counsel to represent the interests of the Class in

the implementation process; (b) set a hearing date for undersigned to present evidence in support of the Motion as the Court deems necessary.

Respectfully submitted,

/s/ Gene Locks
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CLASS COUNSEL

UNITED STATES DISTRICT COURT
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MEMORANDUM IN SUPPORT OF
MOTION OF CLASS COUNSEL THE LOCKS LAW FIRM
FOR APPOINTMENT OF ADMINISTRATIVE CLASS COUNSEL

Undersigned Class Counsel the Locks Law Firm respectfully submits this Memorandum of Law in support of the Motion for Appointment of Administrative Class Counsel.

I. INTRODUCTION

1. The Settlement Agreement, once hailed as a revolutionary compromise and easy to implement, is in danger of failing in its execution. The Agreement was advertised as a method through which diagnosed Class members would receive tangible benefits, a safety net, so to

speak, against brain injury and its destructive effects on Class members and their families. Publicly available numbers and the direct experience of Class members establish that the Settlement is failing to provide a fraction of what the NFL promised. Of nearly 1,100 dementia[1] claims filed to date, only 6 have been paid as of this filing, yet the NFL's projections to this Court predicted 430 dementia claims paid twelve months into implementation. Claims paid for Alzheimer's Disease are better, but are far short of projections. More than half of all claims have been placed into audit or denied, thereby causing interminable delay and preventing payments.

2. The primary reason is that the NFL seeks to rig the Settlement system. At a March 2 symposium, NFL Counsel stated: "The league historically had engaged in scorched-earth litigation. They fought everything in every context, decade after decade after decade. I was advised by senior officials at the league that resolving a case consensually is not in ownerships' DNA."[2] Although NFL Counsel implied that the Settlement represented a change in League policy, implementation proves otherwise. The Settlement is going exactly as the NFL planned; it is a purported compensation system designed to evade payments to players in a myriad of ways, all to the benefit of the NFL.

3. One year into implementation, the NFL has turned the Settlement into a secret, privately litigated claim system that involves changing standards for claim packages, inconsistent and often improper standards of review, a black hole of audits, alleged deficiencies, anonymous opinions, denials, appeals, remands, technical squabbles over what a valid diagnosis might be,

[1] In 2013, the Parties agreed as a compromise that various gradations of dementia would be a surrogate diagnosis for Chronic Traumatic Encephalopathy (CTE), the signature disease of football and boxing, because dementia (or neurocognitive disorder) was clinically one symptom of CTE that could be measured using existing neurological and neuropsychological examinations.

[2] *See* http://clsbluesky.la.columbia.edu/2018/03/08/video-inside-the-nfl-concussion-case/ at 25:00.

and the refusal by the NFL to agree to almost any interpretation of the Agreement that will streamline and make reasonable the claims process.

4. Notwithstanding the efforts of the Special Masters and BrownGreer, reflected in part by the recent FAQs, the NFL seeks to avoid its obligations. It seeks to lure BrownGreer, the AAP, and the Special Masters into second-guessing and discrediting clinical judgments made by board-certified neurologists and neuropsychologists who actually evaluate retired players face to face. The NFL wants to remove these expert clinical judgments and substitute (a) the NFL's own self-serving, biased, and inaccurate diagnostic interpretations pulled out of text books; and (b) the NFL's offensive accusations that a mere modicum of functionality shown by a player undercuts or contradicts the diagnosis by board-certified specialists. If not exposed and contained, the NFL's strategy will defeat valid claims, drive away physicians, lawyers, and players, and circumvent the Court's program.

5. The undersigned Class Counsel have a fiduciary duty to the entire Class under Section 28.1 of the Agreement to implement and administer the Settlement in the best interests of the Class and to make it work. In light of what has happened to the Settlement in the past 12 months, the undersigned seek an order from the Court appointing the Locks Law Firm ("LLF") as Administrative Class Counsel with the same rights and duties currently exercised by Seeger Weiss alone. The basis for this request is as follows:

a. The undersigned have a fiduciary duty to the Class.

b. LLF represents approximately 1,100 registered players, have filed approximately 102 claims, and have obtained 35 awards to date. The firm knows the players, diagnostics, medical science, and Settlement process better than anyone else.

c. Based on its expertise, LLF is best positioned to defend and implement the Settlement as intended and in the best interests of the Class. The firm offers

structural protection for the Class, because it understands from direct experience how every nuance of the NFL's scheme can harm, deny or set back valid individual claims of injured players.

d. LLF brings vital experience implementing many other similar settlements, including *In Re Diet Drugs*.

6. The Seeger Weiss go-it-alone strategy has not worked. The firm was capable of overseeing the Settlement through the approval and appeal process. Alone, it cannot address the current threats to implementation. It has registered only a few clients and filed almost no claims.[3] In 2012, they represented fewer than 25 class members and now they represent fewer still. As a result, Seeger Weiss needs direct help day to day. It has not developed the expertise in the development and administration of individual claims to combat the NFL's scorched-earth strategy. The current state of threatened collapse of the claims process makes the structural problem clear.

7. For these reasons, if the Settlement is to succeed, the Class will be best served by adding a structural protection within the administration. The undersigned, as Administrative Class Counsel, would provide that protection based on their experience with nearly 1,100 registered players and implementing many other mass tort settlements, including *In Re: Diet Drugs*. The undersigned respectfully requests that the Court appoint LLF as Administrative Class Counsel to help protect the interests of the Class in the implementation process and set a hearing date on the Motion if the Court deems it necessary.

[3] Seeger Weiss registered only a handful of players and filed only two claims, both within the last sixty days.

II. ARGUMENT

8. In public pronouncements, this Settlement was hailed as an historic and revolutionary compromise. Seeger Weiss, without any caution from the NFL, was led to believe that implementation procedures would be clear and simple. Players would not even need a lawyer.

9. As implemented, however, the Settlement has not provided the benefits it promised. The NFL forecasted to the Court payments of $242.9 million during the first year of the claims process. Today, nearly twelve months later, only 6 dementia claims have been paid and only a total of $156 million has been paid to players and their families.

10. The chart below compares by compensable injury the NFL's pre-settlement forecasted payments for the first twelve months of the Settlement with the actual results twelve months later.

Category (% projected incidence such category represents of the Whole , *see* ECF 6423-21, Ex. JJ, p. 5)	NFL Year 1 **Forecasted** Payments (*see* ECF 6168 Ex. F)	**Actual** Payments (eleven months later) (ECF 9571, Ex. A, p. 7
ALS (.5 %)	17 Claims, $42.7 million	18 Claims, $48 million
CTE (1.3%)	51 Claims, $50.24 million	49 Claims, $53.8 million
Parkinson's (.4 %)	14 Claims, $7.1 million	28 Claims, $18.55 million
Alzheimer's (48%)	153 Claims, $70.655 million	55 Claims, $24.44 million
Level 2 (49%)	111 Claims, $38.64 million	2 Claim, $2.16 million
Level 1.5 (0% as all assumed within in Level 2)	319 Claims, 33.64 million	4 Claims, 2.68 million
Total Claims Paid	665 Claims	156
Total Amount Paid	$242.9 million	$149.63 million

11. Information from which the data is derived is publicly available on the Claims Administration website. Unpaid claims, many of which the undersigned filed at the first opportunity twelve months ago, have been subjected to a series of alleged deficiency notices, delays, and audits that have spanned eight to twelve months. On information and belief, nearly half of all claims filed by the Class have been placed in audit. Nearly twenty percent of all claims have been denied. The NFL has appealed at least ten percent of all claims.

12. Under these circumstances, it should surprise no one that the Class and its advocates have declared that the Settlement is failing the players. *See* Examples of emails and blog posts players and their advocates regularly circulate among the Class, attached as Exhibit A.

13. The examples of implementation failures set forth below prejudice the Class. They show that the NFL is implementing a scheme, claim by claim and player by player, to create a labyrinth of changing standards of review, secret procedures, audits, appeals and innumerable technical readings of the Agreement to delay and defeat claims and payments. The NFL has not settled this case. It seeks now to attack and remove the judgments neuroscience professionals use in diagnosing patients in a clinical setting and substitute its own biased approach using a lawyer-knows-better-than-a-doctor argument, references to medical text books, and anecdotal, out-of-context evidence about the player's occasional functionality.

14. In summary form, the primary implementation failures that prejudice the Class are:

a. The NFL has tried to obfuscate the correct standard of review by the AAP of pre-effective date claims, and some AAP members do not follow the proper standard.

b. The NFL is using its audit right as a second appeal weapon for the purpose of defeating approved claims via an anonymous and secret procedure.

c. The NFL is engaged in vexatious, frivolous and bad faith appeals in violation of Settlement Section 9.6(b).

d. The NFL (and some AAP members) have improperly introduced a causation requirement into the review process.

e. Some APC and AAP members apply rigid BAP standards for the review of pre-effective date claims in violation of Settlement Section 6.4(b).

f. BrownGreer has been forced to apply rigid BAP criteria to pre-effective date claims in violation of Settlement Section 6.4(b). This constitutes an unannounced amendment to the Agreement.

g. The third party affidavit that is supposed to corroborate functional impairment in a player diagnosed with neurocognitive impairment (dementia) has also been the subject of an unannounced Amendment.

h. Combined, the two surprise amendments have helped create a backlog of dementia cases that are subjected to baseless alleged deficiencies.

i. The AAP is paid below market rates; it must double in size. Keeping it underpaid and small prejudices the Class and benefits the NFL with delay.

j. The NFL has in bad faith prevented outstanding cognitive and behavioral neurologists from joining the AAP to the prejudice of the Class.

k. The NFL argues rigid interpretations of the Agreement to delay and deny valid claims.

l. The BAP as implemented is failing the players. On information and belief, a *de minimis* number of players have received awards through the BAP and most are rejected. Medical professionals have left the BAP or refused to be part of it.

m. At this juncture, obtaining appointments for players takes three to six months.

n. The BAP neuropsychological protocol is inherently biased against African American retired players, which makes it more difficult for approximately 70% of the Class to recover in the Settlement's compensation system.

A. <u>The Standard of Review by the AAP</u>

15. Section 6.4(b) of the Agreement is a provision to which the NFL agreed. It requires the AAP to review pre-effective date claims using a standard of review far less rigid

than BAP criteria. *See* Exhibit B.[4] This was well-negotiated and recognizes that standard clinical practice prior to and outside of the BAP is different from the BAP. The NFL has aggressively contested it and sought to persuade the AAP, BrownGreer and the Special Masters that every pre-effective date claim must conform rigidly to BAP criteria.

16. Within its appeals, the NFL does not even acknowledge that section 6.4(b) exists. Rather, it seeks to hold a diagnosing physician to the BAP's rigid standard or a new standard contrived via text books and references found nowhere in the Agreement. This is one of many ways the NFL is trying to persuade BrownGreer, the AAP, and Special Masters that a valid clinical diagnosis must be doubted in ways no clinician can possibly anticipate, particularly clinicians who diagnosed players long before this system was devised.

17. The AAP members sometimes do not apply the correct standard of review. Some denials by the AAP show that members of the AAP have disregarded the 6.4(b) standard and are applying either strict BAP criteria or some other unwritten private textbook criteria.

18. Some AAP members have imposed rigid BAP criteria and openly contradicted the judgment of the examining neuropsychologist and neurologist regarding test validity. One AAP member denied a claim, in part, because the player allegedly did not show evidence of decline. Yet neuropsychological test results and a thorough assessment by a neurologist of the patient's functional impairment (corroborated by the patient's wife) proved otherwise. The case is currently on appeal and in audit. It illustrates that some AAP members produce results that are contrary to the records they have reviewed.

[4] The Appeals Advisory Panel ("AAP") must review all pre-effective date claims "based on principles" that are "generally consistent" with BAP criteria. It also commands that a pre-effective date diagnosis need not adhere to the same diagnostic criteria as the BAP, which gives a pre-effective date diagnosis substantial leeway in meeting the AAP standard of review.

19. Sometimes, AAP decisions are divorced from reality. A recent denial by the AAP, currently on remand, suggests that the AAP member may not have read or understood the reports provided. The reviewing AAP member denied the claim, in part, because the Class member presented no evidence of impairment. Yet the evidence provided clearly met criteria for 1.5 neurocognitive disorder. In the appeal, the examining neuropsychologist (who has spent the majority of her career at the Hospital of the University of Pennsylvania and Children's Hospital) submitted a sworn affidavit that, in pertinent part, explained that the AAP member could not have understood her evaluation. It appears that the AAP member imposed rigid BAP criteria (or used his or her own private judgment) to conclude that the battery of neuropsychological tests, including the validity tests, were not "generally consistent" with the principles underlying the BAP. Clearly, though, they were.

20. The denial provided an additional cause for concern. The denial was based in part on the grounds that the examining specialists did not investigate the "psychopathology" (mental illness) of the player. The examining neuropsychologist, however, did acknowledge the condition and adjusted the test process in response. But, more significantly, the denial shows a bias and lack of understanding. Psychiatric symptoms are associated with mild traumatic brain injury; this is common knowledge. And the fact of mental illness, whether or not it is a contributing factor to neurocognitive decline, can never form a basis to deny a claim in this Settlement.

21. This is one example of an AAP member improperly using speculation about a contributing cause (mental illness) to reject a claim. It begs the question whether the AAP member understands Section 6.4(b), but also whether the NFL's efforts to confuse the AAP have

been successful. This and other examples are available for the Court's review either *in camera* or in redacted form.

22. The example also shows that Class Counsel must track decisions by AAP members to determine whether members show bias against the Class or confusion regarding the standard of review for pre-effective date claims. Without access to any AAP decision other than those the undersigned must address directly, the undersigned cannot track the decisions and, if necessary, take action. An appointment as Administrative Class Counsel will permit the undersigned to perform this evaluation on an ongoing basis.

B. The NFL's Misuse of the Audit Process.

23. On information and belief, more than half of all claims have been placed in audit or been denied outright. Of the claims that have received awards, the NFL has appealed 35.

24. One case, in particular, shows that the NFL seeks to modify the Settlement into a secret process via audits to defeat approved claims. In this case, a 41 year old player had a decade-long history of neurodegenerative decline, including multiple positive neuropsychological tests (including one from a neuropsychologist employed by the New York Giants). An MAF neurologist evaluated the player and diagnosed him with early onset Alzheimer's Disease based on those test results, a 12/30 score on the Mini-Mental Status Exam and a positive amyloid PET brain scan.[5] The NFL then appealed and lost in November. The claim remains unpaid.

[5] Amyloid PET scans allow for accurate detection of amyloid plaques, a hallmark of Alzheimer's Disease in living people. The player also had a positive PET - FDG scan and an MRI that showed brain damage (axonal shearing).

25. On the last day before the award was to be accepted for check-writing, the NFL demanded an audit. Its basis was a three minute videotape of the player speaking publicly four years earlier. The NFL alleged that the three-minute video was anecdotal evidence of something improper. Notwithstanding overwhelming objective evidence to support the diagnosis, the NFL accused the MAF physician, multiple neuropsychologists, the PET scanning service, the radiologist, the player, and the player's family of fraud.[6] Clearly, the NFL is scouring the internet and social media sites to find isolated out-of-context moments of lucid behavior by a player (in this case, four years earlier) to drum up doubt about a sound MAF diagnosis approved by BrownGreer and the Special Masters.

26. Even more disturbing, the NFL is now demanding that BrownGreer seek a differing medical opinion from the AAP as part of the audit process for the purpose of gutting the approved diagnosis and claim. If it succeeds, the NFL will have morphed the Agreement into an opportunity for the NFL to shop for an anonymous medical opinion via the audit process to defeat a well-supported and approved claim.

27. The implications are enormous. The NFL is placing the Settlement at risk of becoming an NFL-controlled opportunity to defeat a diagnosis through the audit process. The NFL wants this done out of the public view and with anonymous physicians who have never seen or evaluated the player. This is a misuse of the audit procedures, contrary to the purpose of the AAP, and contrary to the purpose of the Settlement Agreement. On information and belief, it's part of an NFL scheme to circumvent the Court's decision to uncap the Settlement.

[6] Attached as Exhibit C are an email and letter to the Claims Administrator (without using identifying information about the claimant) that addresses this case and the misuse by the NFL of its audit right.

C. The Latest Skirmish

28. Yesterday, co-lead counsel Anapol Weiss filed a Motion to Intervene (document no. 9784) for a hearing on the incessant and unfair delays in the processing of dementia and Alzheimer's claims generally, but specifically the claim of their client Wayne Radloff.

29. Twenty-four hours after Anapol Weiss filed its Motion, Mr. Radloff received a Notice of Monetary Award. It is distressing that, as this case suggests, a player must file a Motion to obtain an award.

30. It also reflects the larger problem. Like Mr. Radloff's claim, more than a thousand claims sit in some undetermined administrative limbo, audit or appeal. The litany of administrative tangles, delay and constant questioning described in the Anapol Weiss Motion is what nearly every player faces. It is not what was promised and advertised to persuade players and their counsel to become part of the Settlement Class.

31. Moreover, Mr. Radloff has not been paid. The NFL has thirty days to appeal, which could delay payment for months. Even if the NFL loses on appeal, it may invoke its audit rights improperly and take another chance at defeating Mr. Radloff's claim in a secret procedure with an anonymous opinion from a physician who never examined Mr. Radloff at all.

32. During this entire time period, Mr. Radloff's claim has lost value. No interest is accumulated or paid. Arguably, the delay to date has cost Mr. Radloff nearly $100,000.

D. The NFL's Vexatious Appeals

33. As with its audit right, the NFL seeks to stop and deny valid claims via appeal. The NFL has appealed 35 claims largely on frivolous grounds, often arguing, for example, that Alzheimer's Disease cannot occur in younger men, because it is so rare in people under 65 years old in the general population. This reflects the NFL's bad faith approach. Head injury is a well-

known risk factor for Alzheimer's. The NFL has admitted in papers that the dementia associated with Alzheimer's (major neurocognitive disorder) is 200 times more likely in this population than the general population. *See* Exhibit D attached. Yet the NFL argues that awards granted to players (both Alzheimer's and dementia awards) should be reversed on the grounds that some small functionality by the retired player is evidence that he does not qualify.

34. The NFL's approach shows three things: (a) the League will argue virtually anything to evade payments; (b) it seeks to substitute via an appeal its lawyer's opinion for the diagnosis of a board-certified neurologist who actually examined the player in a clinical setting; and (c) it refuses to accept that some functionality by the patient at any given moment in time does not negate the clinical evidence and judgment of the diagnosing specialists.

35. The NFL has often argued that depression or sleep disorder explains the retired players' decline, even though these conditions are common symptoms of brain injury. On that basis, the NFL has argued that the diagnoses of board-certified clinical specialists in Parkinson's Disease and Alzheimer's Disease must be wrong or incomplete.

36. The NFL has appealed awards on the frivolous grounds that the diagnosing physician did not sufficiently rule out other hypothetical causes. The NFL has speculated on appeal that clinically diagnosed Alzheimer's Disease might be caused by something else (depression or sleep disorder, which are symptoms of brain injury) and, therefore, the hypothetical causes must be ruled out via extensive testing before an award can be granted.

37. This is contrary to a foundation of the Agreement, which states that the player need not prove that football caused the injuries or exclude the possibility that other risk factors are linked to a qualifying diagnosis. *See* FAQ 15 appended to the Agreement, attached here as Exhibit E ("You also do not need to exclude the possibility that the Qualifying Diagnosis was

caused or contributed to by amateur football or other professional football league injuries or by various risk factors linked to the Qualifying Diagnosis.") (Emphasis added.)

E. The NFL's Bad Faith Interpretations of the Agreement

38. By way of example only, the NFL took the position from the outset of implementation, that under section 8.2 (a) (iii) of the Agreement (attached as Exhibit F) a physician who diagnosed a player in the past must sign the Court-required Diagnosing Physician Form ("DPC") unless the physician was dead or adjudicated incompetent by the court.

39. In June 2017, the undersigned brought to the NFL's attention two easy cases of players who had been on the NFL's 88 Plan (for brain injury) for many years. The players had been diagnosed at a major university in Houston with moderate dementia in 2013 and 2014 respectively, but the physicians no longer practiced at the university and were not inclined to respond or sign a DPC, because the players were no longer their patients. One physician had moved away to Switzerland and could not be contacted except on Facebook messenger.

40. All of this the undersigned explained via letters in response to deficiency notices from BrownGreer. The undersigned argued that the claims had obvious indicia of reliability, and the Parties should read section 8.2 expansively for the players. The NFL refused. Months passed before the NFL responded with a compromise and demanded new and expensive re-testing of each player via the MAF program. Instead of relying on the 88 Plan's acceptance of the players and a major university's neurological evaluations, the NFL chose to impose additional requirements, more costs, and more delay for retired players in their late fifties who are unemployable, depressed, brain damaged, and intermittently homeless but for the grace of family members.

41. The NFL has refused to permit its own physicians in the disability benefits plans to sign a Diagnosing Physician Certification required by the Settlement. Many players have been diagnosed with dementia and other diseases by NFL-hired neurologists and received full disability benefits based on the diagnoses. Yet the NFL will not permit its own neurologists to sign the Diagnosing Physician Certification so the player can recover under the Settlement. Rather, the player must submit to re-testing via the BAP or MAF programs and acquire a different physician to sign a DPC.

42. There is no reason for this, and the consequences to the players are enormous. It prejudices the player and his family by delay; it also places the player at risk of dying before re-testing and making him and/or his family ineligible for benefits. It also creates an unnecessary and unreasonable burden on families and players, many of whom struggle with simple day to day existence, are in chronic pain, and vulnerable.

F. <u>The Surprise Amendments</u>

43. The NFL's scheme started in the first month of implementation. BrownGreer was instructed to apply BAP Criteria to all Pre-effective Date Claims, even though the standard of review is 6.4(b). *See* Exhibit B. This was an Amendment without notice to the Court, the Class, attorneys for Class members, and the undersigned; it serves the NFL's scheme to change review standards and prejudice the Class. No one who prepared a pre-effective date claim in 2015 and 2016 knew this would happen. It has created an endless backlog of purported deficiencies, delays and arguments. Had the undersigned been involved, the Amendment would not have happened.

44. In response, the undersigned have argued against the Amendment in nearly all of their pre-effective date dementia claims, most of which were filed in spring and summer of 2017

and remain unresolved and pending. All are of record with BrownGreer and can be produced *in camera* or at a hearing.

45. BrownGreer was also required to impose a second Amendment. It was required to find deficient any pre-effective date dementia claim if a third-party affidavit used to corroborate the functional impairment of a player was dated after the date of diagnosis. This purported deficiency was applied to nearly every pre-effective date claim and created incessant delays and denials for more than 1,000 players.

46. The Agreement, however, does not place any date restriction on the corroborating affidavit. *See* the Settlement Agreement's injury definitions for neurocognitive impairment, attached as Exhibit G. This is the only text within the Settlement that requires a third party corroborating affidavit for the functional impairment of a claimant. Nowhere in the text (explicit or implied) is there a date restriction. Also, section 6.4(b) does not require strict adherence to the BAP for pre-effective date claims; therefore, a corroborating affidavit is not strictly necessary for a pre-effective date claim, and striking one based on its date is contrary to both the BAP injury definitions and section 6.4(b).

47. Obviously, the Amendment exclusively benefits the NFL (via delay and denial of claims) and prejudices the Class by compromising pre-effective date claims based on the whim of the NFL. Not one lawyer or player who submitted a pre-effective date claim had any notice or an opportunity to be heard on this critical modification to the Agreement. The undersigned Class Counsel never knew of the Amendment in advance. We responded case by case (in possibly 70 pre-effective date claims) and laid out our arguments regarding why this second Amendment had no foundation.

48. Both Amendments illustrate the need for additional counsel to be involved directly in the day to day decision/negotiation process. Had the undersigned been directly involved, the surprise Amendments would not have happened. To the contrary, we would have brought the self-serving "interpretation" by the NFL directly to the Special Masters and the Court and sought intervention to protect the Class.

49. When the Locks Law Firm saw the Amendments, we reached out to Seeger Weiss in summer 2017 to address implementation decisions that were adverse to the Class. At that time, we requested direct involvement in implementation and a desire to work directly with Seeger Weiss, but we were rebuffed. If the Court cares to review the correspondence associated with those efforts, it is attached as Exhibit H. Seeger Weiss at first agreed to involve the undersigned in all meetings and phone calls with the NFL and the Special Master, but changed its mind two weeks later. Seeger Weiss agreed to conference calls with the undersigned now and then to report on developments, but this is not the same as direct involvement.

50. We brought the two surprise Amendments and other problems to the attention to BrownGreer via a memorandum (attached as Exhibit I) dated November 6, 2017 and suggested solutions to every problem that, to our limited knowledge at that time, afflicted the claims process.

51. The Amendments are still in place and still prejudice the Class. To the best of the undersigned's knowledge, every pre-effective date claim is subject to strict BAP requirements. A corroborating affidavit considered by the physician but dated after the date of diagnosis on the physician's report is barred as evidence of functional impairment for any pre-effective date claim.

G. The AAP's Need to Expand

52. One AAP member, now the subject of an approved Application (document no. 9753), was relatively inactive. Only four members of the AAP actually reviewed claims on a regular basis for the past twelve months. This has prejudiced the Class in the same way the surprise Amendment have. Claims cannot be processed properly and expeditiously. It benefits the NFL, because it delays the claims process and payment obligations.

53. The AAP's lack of action and the backlog of claims requires reconstitution of the AAP. It should double in size. Physicians should not be general neurologists but, rather, they should be specialists in mild traumatic brain injury and cognitive and behavioral neurology on a clinical basis, which are the specialties most attuned to the diagnostic issues for the Class.

54. Rates paid to AAP members should rise to proper market rates depending on the background, experience, and stature of the proposed AAP member in the profession. Proposed AAP members should not be turned away because their hourly rates are higher than those set by the Court.

55. AAP members should not be turned away because they have actually treated or evaluated a retired NFL player, yet the NFL consistently objects to exceptionally well-qualified AAP candidates. For example, the NFL objected to one candidate for the AAP submitted by the undersigned, because the physician (a specialist in cognitive and behavioral neurology and formerly a full Professor of Neurology at Duke University) stated in an interview that a player he evaluated had symptoms consistent with CTE. The NFL took the position that the physician was a "CTE believer" and used that as the basis for the objection.

56. This is bad faith. It harms the Settlement and harms the Class. It shows the NFL seeks to suppress from the AAP qualified neurologists who recognize what is diagnostically

obvious – that players suffer from many symptoms of neurodegenerative disease, including the well-recognized symptoms of CTE.

57. In January 2017 the undersigned Class Counsel proposed as an AAP member the current Chair of the Cognitive and Behavioral Neurology Department at Harvard University, a medical professional familiar with several members of the Class as patients, two of whom have received monetary awards. His rates are higher than those set for the AAP. He declined participation on the AAP based on the fact that the Parties insisted that he take a pay cut. The undersigned requested an exception to the rates, but the request was refused. Sacrificing the candidate's expertise on the basis of an hourly rate prejudices the Class. He is a thought leader on diagnostic issues critical to the Class and is an outstanding clinician.

58. The NFL should not be heard to object to proposed AAP neurologists who are familiar with symptomatic retired players. Familiarity with Class members should weigh in favor of participation on the AAP, not against it. Cognitive and behavioral neurologists who are familiar with the neurological conditions of Class members have the best clinical expertise available and are a benefit to this process.

59. As recently as October 2017 and January 2018, the undersigned Class Counsel nominated two outstanding cognitive and behavioral neurologists to the AAP. Both have extraordinary credentials. One is a Professor of Neurology and the Director of Clinical Traumatic Brain Injury Research at the Hospital of the University of Pennsylvania, less than thirty blocks from the Courthouse. He is a thought leader in this subject matter. The other, a cognitive and behavioral clinical neurologist at Emory University, trained at Mayo Clinic and Penn. He too is a thought leader on the subject matter addressed by the AAP. Both are outstanding clinicians. The NFL objected on the grounds that the physicians had had limited

contact with the undersigned Class Counsel. This is a bad faith objection and smacks of the NFL's effort to keep off of the AAP neurologists with the right clinical expertise.

H. The Need for Structural Protection.

60. The Settlement is at a crossroads. The foregoing facts and circumstances, all of which can and will be supported by evidence at a hearing if the Court requires, show that the NFL is in full litigation mode against the Class. By appointing LLF as Administrative Class Counsel the Court will provide the Class with a structural protection against the NFL's approach in day to day implementation decisions and negotiations as follows:

(a) Class Counsel (not just one co-lead counsel) will be aware of and directly involved in implementation decisions, which has not been true to date.

(b) The undersigned represents nearly 1,100 players via contracts, have filed more than 100 claims and received 35 awards to date, some of which are on appeal by the NFL. They have an ongoing incentive to those players and the Class generally to have claims successfully resolved expeditiously and fairly.

(c) The undersigned have developed over the past five years a reservoir of knowledge regarding how cognitive and behavioral neurologists address and evaluate symptomatic players (i) under principles generally consistent with BAP criteria and (ii) under rigid BAP criteria.

(d) They know first-hand the obstructionist tactics of the NFL directed at their clients and the adverse effect those tactics have on players and families.

(e) They know the network of outstanding cognitive and behavioral neurologists nationwide both within the MAF/BAP network and yet to be nominated to the MAF/BAP network. Those physicians are the experts who should be directly involved in the

AAP. They should be in a position to advise the Court and Special Masters regarding the proper implementation of the diagnostic standards. They also understand the neuroscience underlying neurodegenerative disease caused by repetitive head trauma. This expertise will help the Court, the Special Masters, and the Class.

(f) Seeger Weiss cannot satisfy these duties alone. It does not have the resources, the expertise, or the day to day incentives to engage in aggressive advocacy on behalf of players.

58. For these reasons, the undersigned seeks to work with Seeger Weiss to make the Settlement successful for the Class and to combat the current obstructionist tactics of the NFL.

III. CONCLUSION

For all of the forgoing reasons, undersigned Class Counsel the Locks Law Firm respectfully requests that the Court grant the Motion and enter the proposed Order appointing the Locks Law Firm as Administrative Class Counsel with all the rights and duties of co-lead counsel Seeger Weiss.

Respectfully submitted,

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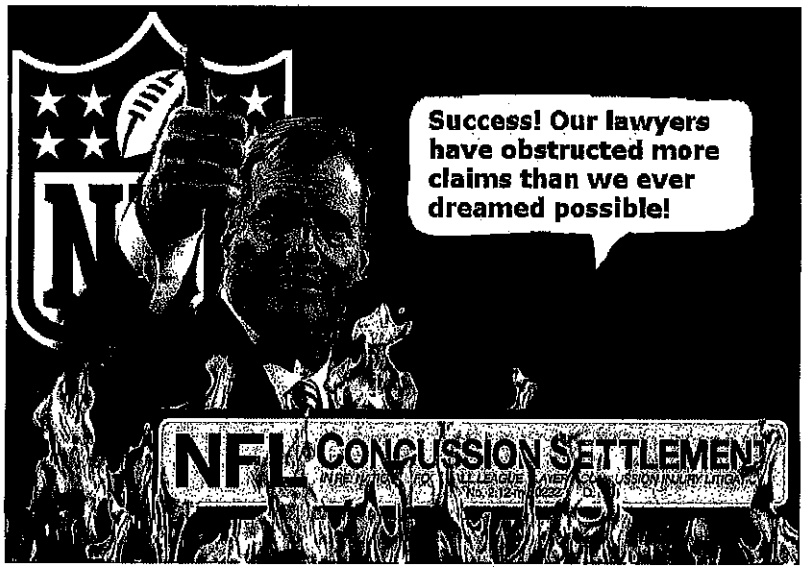
EXHIBIT A

NFL's Treatment Of Retired Players in Concussion Settlement Shows League's Lack of Integrity



January 21, 2018
Sheilla Dingus

Roger Goodell and the NFL talk about integrity quite a bit. Nothing is more important to them than the integrity of the game, they say. Perhaps they need to invest in some dictionaries, because they speak of integrity but deliver the opposite. Consider:

- The NFL has opposed the citizen voters of New Jersey in their desire for legal sports gambling while placing a team in Las Vegas and heartily endorsing daily fantasy sports.
- NFL witch-hunt styled investigations with the purpose of reinforcing unilateral disciplinary power while bowing to the whims of owners and/or perceived public opinion.
- Consistently inconsistent handling of domestic violence incidents
- The pursuit of taxpayer funded stadiums which has resulted in relocation of franchises and disenfranchisement of entire fan bases.
- Ever-increasing ticket prices and personal seat licenses which places live game attendance and season-ticket holder status increasingly out of financial reach of many fans.
- Concussion protocol that applies when convenient and disappears when less convenient
- Excessive use of dangerous opioid and NSAID painkillers while denying players the less harmful choice of medical marijuana

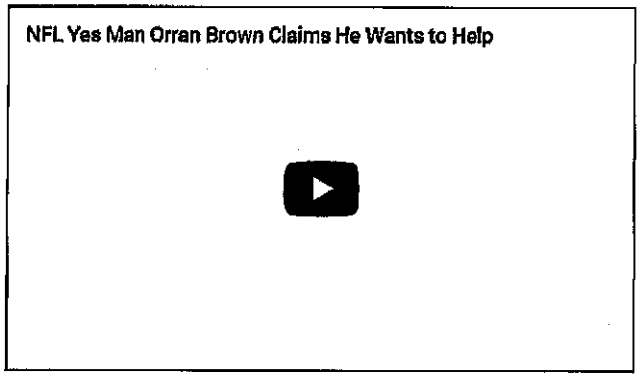
I could fill an article with various bullet points that demonstrate the NFL's version of integrity but no where is the behavior more egregious and despicable than in its treatment of all but a select few retirees. While a torturous disability qualification process has existed for many years, drifting in and out of the public eye and congressional interest, the much heralded, uncapped concussion settlement, estimated at $1 billion dollars is at best a slap-in-the face, and at worst a death sentence to the players whose labor built the $14 billion league.

As the clock ticks down to Super Bowl LII - as you watch the games - look at the players. Really look at them. Look at their faces when you can see beyond the facemasks, and know - they will be tomorrow's retirees. And for the love of humanity pray that they see a kinder fate than their discarded brethren who came before.

In December 2016 the Supreme Court declined to hear an appeal which objected to the concussion settlement which was amended in 2014 and accepted by the lower courts, kicking off a registration period for benefits which ran through August 7, 2017. Widespread efforts were made to recruit enrollment for settlement benefits, warning retired players that if they failed to register

they would be forever unable to file a claim. According to a New York Times article, Co-Lead Class Counsel Chris Seeger stated, "players with diseases that have already been diagnosed should receive checks within weeks after filing their paperwork." This was indeed the mantra touted by both Chris Seeger and the NFL throughout the registration period. Players who had existing diagnoses for ALS, Parkinson's Disease, Alzheimer's, and dementia were led to believe that once their claims were filed checks would be issued in a short time frame. What Seeger failed to inform the players was that it would take in most cases about 36 weeks or *nine months for approval for the lucky few whose diagnoses made it past the scrutiny of an over zealous claims administrator and didn't wind up the subject of an audit or NFL appeal.*

Players were never informed that additional "fraud prevention" language was added to the settlement when it became uncapped that would give the NFL infinite ability to delay and appeal claims; instead they were sold on a process that was so simple they didn't even need an attorney and so unlike the disability nightmare, they had no reason for worry. And Claims Administrator Orran Brown specifically stated in a "sign-up" webinar that the process would be quick. Watch the video below, courtesy of @PlayerJustice and listen to the pitch.



In a September 28 declaration to the court, the same Orran Brown stated that through 67 calls with Chris Seeger and the NFL, "we have developed many policies and procedures necessary to implement the terms of the Settlement Agreement. However, we adopt no procedures on anything, including how we review Monetary Award claims, until we have presented them to Co-Lead Class Counsel and Counsel for the NFL Parties. . . and they have commented upon and approved them, to ensure that we implement the Settlement Agreement according to its terms and the *intentions* of the Parties who wrote it and agreed to it."

"We are pleased the concussion settlement is proceeding as the parties and the court intended," said NFL spokesman Brian McCarthy in a recent New York Times article that described how Mike Webster, the first NFL player posthumously diagnosed with CTE was blocked from the settlement along with Terry Long and Justin Strzelczyk, two other players who were diagnosed prior to 2006 which is one of the cut off dates for death with CTE claims with the other cut-off being July 7, 2014. The settlement does not cover CTE symptoms and the only death with CTE claims that are considered "valid" according to the settlement are those which occurred in the defined 7 ½ year time span.

The chart below is from the January 16, 2018 claims report which indicates that 2,013 claims have been filed. Approved claim totals are shown in the first grid and those which have actually been paid are shown in the second. As you can see, approved claims are sitting at approximately 10% with claims actually paid at under 5% of those filed to date.

	Status by Confirmed Qualifying Diagnosis	Number	Amount
1.	Notice of Monetary Award	210	$256,729,033
	(a) Death with CTE	53	$70,603,267
	(b) ALS	20	$66,410,000
	(c) Alzheimer's Disease	78	$59,665,300
	(d) Parkinson's Disease	37	$32,441,600
	(e) Level 2.0 Neurocognitive Impairment	7	$12,667,333
	(f) Level 1.5 Neurocognitive Impairment	15	$14,936,333
2.	Paid Claims	98	$96,192,411
	(a) Death with CTE	36	$39,215,772
	(b) ALS	14	$36,535,411
	(c) Alzheimer's Disease	25	$11,587,935
	(d) Parkinson's Disease	12	$4,720,065
	(e) Level 2.0 Neurocognitive Impairment	1	$1,503,525
	(f) Level 1.5 Neurocognitive Impairment	3	$1,509,203
	(g) Derivative Claimants	7	$120,499

The following table illustrates deductions from these awards.

2.	Deductions for Offsets	67	$69,417,900
	(a) Death with CTE	15	$20,336,400
	(b) ALS	5	$13,040,000
	(c) Alzheimer's Disease	27	$9,320,700
	(d) Parkinson's Disease	16	$14,168,200
	(e) Level 2.0 Neurocognitive Impairment	2	$2,100,600
	(f) Level 1.5 Neurocognitive Impairment	2	$450,000
3.	Deductions for Derivative Claimant Awards	107	$1,478,243
	(a) Death with CTE	39	$526,691
	(b) ALS	11	$415,000
	(c) Alzheimer's Disease	31	$298,000
	(d) Parkinson's Disease	14	$101,079
	(e) Level 2.0 Neurocognitive Impairment	3	$47,173
	(f) Level 1.5 Neurocognitive Impairment	9	$90,300
4.	Withholding for Common Benefit Fees	210	$12,607,540
	(a) Death with CTE	53	$3,504,079
	(b) ALS	20	$3,344,750
	(c) Alzheimer's Disease	78	$2,968,365
	(d) Parkinson's Disease	37	$1,617,036
	(e) Level 2.0 Neurocognitive Impairment	7	$631,008
	(f) Level 1.5 Neurocognitive Impairment	15	$742,302
5.	Withholding for Liens	194	$59,019,248
	(a) Death with CTE	17	$10,605,140
	(b) ALS	15	$21,662,850
	(c) Alzheimer's Disease	40	$9,705,644
	(d) Parkinson's Disease	19	$4,961,130
	(e) Level 2.0 Neurocognitive Impairment	5	$3,661,365
	(f) Level 1.5 Neurocognitive Impairment	8	$2,423,116

As you will note from the table above, the largest chunk of deductions come by way of "offsets" – NFL imposed conditions such a having a stroke prior to the qualifying condition's diagnosis, which can reduce a claim by up to 75%.

In looking at approved Death with CTE claims, the total in the first table is $70,608,267, but when adding up the deductions in the second table you see that $34,974,310 was deducted for liens, offsets and other deductions leaving a net of $35,633,957. Dividing by 53 for the total number of approved claims, the average payout comes to $672,338. While this is a substantial sum, it hardly replaces a lost loved one, and doesn't resemble what class members were led to believe they would receive based on the chart below.

AGE AT DIAGNOSIS	ALS	DEATH W/CTE	PARKINSON'S	ALZHEIMER'S	LEVEL 2	LEVEL 1.5
Under 45	$5,000,000	$4,000,000	$3,500,000	$3,500,000	$3,000,000	$1,500,000
45-49	$4,500,000	$3,200,000	$2,470,000	$2,300,000	$1,900,000	$950,000
50-54	$4,000,000	$2,300,000	$1,900,000	$1,600,000	$1,200,000	$600,000
55-59	$3,500,000	$1,400,000	$1,300,000	$1,150,000	$950,000	$475,000
60-64	$3,000,000	$1,200,000	$1,000,000	$950,000	$580,000	$290,000
65-69	$2,500,000	$980,000	$760,000	$620,000	$380,000	$190,000
70-74	$1,750,000	$600,000	$475,000	$380,000	$210,000	$105,000
75-79	$1,000,000	$160,000	$145,000	$130,000	$80,000	$40,000
80+	$300,000	$50,000	$50,000	$50,000	$50,000	$25,000

In any event, regardless of diagnosis, the numbers depicted in the chart above – those sold to the class of impaired players and the general public look a lot different than the amount of compensation players are actually receiving.

Perhaps the most troubling aspect in examination of the claims picture is that the over 35% of approved claims fall under the "easier" approval process for Death with CTE and ALS, but this certainly doesn't represent 35% of claims filed. Most of the claims in this category for the existing population of retired players are already filed and in process. What this means is that the 5% of claims filed for these categories represent 35% of approved awards. And while every single player suffering from the horrific destruction of ALS deserves priority and every widow who has lost her husband to the devastation of CTE can never be fully compensated for her loss, the other 95% of players who are afflicted with Parkinson's Disease, Alzheimer's, or dementia deserve much better.

A white paper prepared by NFLObjectors points out that:

"These are the easiest cases to process. Many of the subjects are deceased or near death. Many cases have extensive pathological examinations and documented clinical histories. Further, the subjects will avoid the devious BAP screening program. Nonetheless, the performance of the settlement is as expected. A disaster for the class."

Sobering figures are entered in support of this claim.

- Nearly 50% of the publicly reported CTE deceased (29% class claims) cases have been processed or are in process.
- 80% of eligible ALS (25% of class claims) cases have been processed or are in process.

What this means, as pointed out earlier, the easier claims are either processed or in process, leaving other diagnoses at the mercy (or more appropriately lack of mercy) of the ruthless scrutiny of the NFL. Attorneys have indicated to me that they believe the NFL attorneys have a neurologist examining claims with them looking for any hole or technicality they can use to delay or deny payment of a claim. It's not a process that seeks legitimacy, but one grounded in denial if there is any possible loophole that can be exploited.

As predicted before the claims process even commenced, dementia claims are being hardest hit. They make up 65% of submitted claims but only 2% of approved claims and a fraction of 1% of paid monetary awards.

As pointed out in the Objectors' Report: "Analyzing the NFL Settlement Claim Reports is overcoming the Administrator and Class Counsels' obvious attempts to conceal the egregious deficiencies designed into the settlement."

- 43.8% (137MM/314MM) of the MAF settlement grid amount represents offsets (liens, settlement mandated deductions and derivative claims)
- 19% discount implies these offsets are for young veteran players, with older retirees taking an even larger hit.

Based on this analysis of deductions the projected picture for future awards is bracing:

- 28% of the Death w/ CTE claimants are unlikely to receive any remuneration.
- 25% of ALS claimants are unlikely to receive any remuneration.
- 36% of Alzheimer's claimants will receive an average $240K (approximately 3 years of care).
- 42% of Parkinson's Disease (PD) claimants will receive less $50K (approximately 4 years of out of pocket costs for PD).

CTE Omissions

Many class members still seem oblivious and even incredulous to the fact that CTE was excluded from the settlement. This was a masterful victory for the NFL and according to sources close to the claims process, medical records which indicate the possibility of CTE, are being used by the NFL in an attempt to discredit other diagnoses which would qualify a claimant for other conditions such as Alzheimer's or dementia.

As detailed previously only a few of the dead will qualify for a CTE award because of the small time window imposed for qualifying claims. Chris Seeger justifies this by claiming that the cutoff was designed to prevent more suicides by CTE sufferers. If this is actually the reason, it has been ineffective, as 20 percent of the completed suicides in the NFL's 93 year history have been completed in the past 31 months – the time since the amended settlement agreement was adopted at which time CTE deaths became noncompensable. In reality, this was probably foresight on the part of the NFL since they undoubtedly realized that a very large population of players would be posthumously diagnosed regardless of whether their deaths were self-inflicted or otherwise. The results of a Boston University study in which 99% of the brains of former NFLers tested positive for CTE would tend to validate this assumption. While the study recognized that the brains donated represented a symptomatic representation of retired players, the Objectors' report projects 1,500 cases at minimum with only 110 eligible to file a claim.

As one attorney in the case pointed out, the NFL's attorneys are doing their jobs and doing them well. Chris Seeger's narrative tends to change depending on his audience but many observers feel he sold out the class of retired players for $112.5 million in NFL money. The NFL has faced enough firestorms in Roger Goodell's tenure as commissioner to kill most businesses but in spite of two years of steady TV ratings declines they have managed to remain the most prosperous sports entity in the United States. I firmly believe the reason for the decline is the lack of integrity shown in pretty much every issue across the board that doesn't reek of a public PR pitch. Unless the league finds a way to put this in check, its lack of integrity will one day be its undoing. If they wish to halt the downward progression and restore some respect, they could start by calling off the bulldogs and taking care of the suffering men who built their fortunes.

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NFLPLAYERSBRAINSMATTER

FOR PLAYERS ONLY!

Players Source for the Latest Updates on NFL Concussion Lawsuit
From Fred Willis & NFL Players Brains Matter
Retired NFL Player, Advocate & Councilor
Thursday, March 15th, 2018

Didn't We Win Our Lawsuit?

"The Settlement Claims Process is an Acrimonious, Arduous & Potentially Unfulfilling Journey & for the NFL and BrownGreer to Make it More Difficult is Beyond Cruel."

Is This A Conclusion?

The Fact Is Most Players Don't Understand How They Have Been Excluded from This Concussion Settlement!

The vast majority of diagnosed dementia players are now faced with huge obstacles from notice of deficiencies, audits and appeals.

Examining doctors must compare cognitive decline with a players prior medical records to become eligible to receive any funds.

Any future claim for anything other than Alzheimer's or ALS is gone.

A player that is diagnosed with CTE – the biggest problem impacting the lives of most players ***– gets nothing.***

BrownGreer the Claims Administrator is ***'immovable'*** from their position in interpretation of the settlement language, as opposed to the actual language contained in the settlement.

Players have been examined and have injuries that warrant a pay-out NOW. They have submitted the proof and are being told the proof needed has now changed.

Players need to get paid according to the settlement agreement not delayed/denied based on interpretations outside of the settlement.

'If you are a plaintiff in the NFL Concussion Lawsuit and have qualified for a monetary settlement award, this may be the most compelling email you will ever read on why no one is getting paid!'

The Audits Continue!!

Audits on Claims Have Increased from 21% to 30% and Rising!

Brown Greer Has 'Reason To Believe' You have committed ***Fraud*** or may be misrepresenting Your claim!!!

The Claims Administrator is using the Audit procedures to engage in fishing expeditions on a massive scale and there is a systemic bias against 1.5 or 2.0 Claim Packages. According to the February 19, 2018, Monetary Award Claims Report, 1,079 1.5 and 2.0 Claim Packages have been submitted but only 4 of these Claims have been paid to players!

We continue to fight for our claims to be paid, against the 2 Headed Monster; the NFL and Orran Brown of BrownGreer!

The NFL and BrownGreer has unchecked audit power under the settlement and wields it with reckless abandon, in an attempt to frustrate players by delaying claims, hoping the brained damaged victim will die, relent and go away.

LOOK HERE!!!!

How Long Is Your Monetary Award Claim Going To Take?

Here is a Timeline and Graphic Representation in Chronological Order as to the Sequence of Events that Will Enable Players to Understand Why We Are Not Getting Paid!

This Is The Settlement Claim ProcessTimeline!

PRE-EFFECTIVE CLAIMS - Estimate **700+** Days
MAF CLAIMS - Estimate **255+** days
BAP CLAIMS - Estimate **645+** Days

Download The Settlement Claim Process Timeline!!!

EXHIBIT B

(f) A Qualifying Diagnosis of Death with CTE shall be made only for Retired NFL Football Players who died prior to the Final Approval Date, through a post-mortem diagnosis made by a board-certified neuropathologist prior to the Final Approval Date, provided that a Retired NFL Football Player who died between July 7, 2014 and the Final Approval Date shall have until 270 days from his date of death to obtain such a post-mortem diagnosis.

Section 6.4 Qualifying Diagnosis Review by Appeals Advisory Panel.

(a) A member of the Appeals Advisory Panel must review, as set forth in Section 6.4(b), Qualifying Diagnoses made prior to the Effective Date by:

(i) A board-certified neurologist, board-certified neurosurgeon, or other board-certified neuro-specialist physician, who is not a Qualified MAF Physician, between July 1, 2011 and the Effective Date;

(ii) A neurologist, neurosurgeon, or other neuro-specialist physician, who is not board-certified but is otherwise qualified; and

(iii) A physician who is not a Qualified MAF Physician and who is not otherwise identified in Section 6.4(a)(i)-(ii) but who has sufficient qualifications (i) in the field of neurology to make a Qualifying Diagnosis of Level 1.5 Neurocognitive Impairment, Level 2 Neurocognitive Impairment, Alzheimer's Disease, Parkinson's Disease, or ALS, or (ii) in the field of neurocognitive disorders to make a Qualifying Diagnosis of Level 1.5 Neurocognitive Impairment or Level 2 Neurocognitive Impairment.

(b) If a review of a Qualifying Diagnosis by a member of the Appeals Advisory Panel is required by Section 6.4(a), the contents of the Claim Package relevant to the Qualifying Diagnosis, including the Claim Form, the Diagnosing Physician Certification, medical records supporting and reflecting the Qualifying Diagnosis, and any other related materials concerning the Qualifying Diagnosis, shall be submitted to a member of the Appeals Advisory Panel for review. The Appeals Advisory Panel member will determine whether the Retired NFL Football Player or deceased Retired NFL Football Player has the Qualifying Diagnosis reported in the Diagnosing Physician Certification, or, where there is no Diagnosing Physician Certification as set forth in Section 8.2(a), reported in the Claim Package submitted by the Representative Claimant. The Appeals Advisory Panel member shall review the Qualifying Diagnosis based on principles generally consistent with the diagnostic criteria set forth in Exhibit 1 (Injury Definitions), including consideration of, without limitation, the qualifications of the diagnosing physician, the supporting medical records and the year and state of medicine in which the Qualifying Diagnosis was made. The Appeals Advisory Panel member also shall confirm that the Qualifying Diagnosis was made by an appropriate physician as set forth in Section 6.3. For the avoidance of any doubt, the review of whether a Qualifying Diagnosis is based on principles generally consistent with the diagnostic criteria set forth in Exhibit 1 (Injury Definitions) does not require identical

diagnostic criteria, including without limitation, the same testing protocols or documentation requirements.

(i) The review by a member of the Appeals Advisory Panel under this subsection, absent extraordinary circumstances impacting the schedule of such member, shall be completed within forty-five (45) days of the date on which he or she receives a Settlement Class Member's file, except such time limit may be altered to the extent the volume of files warrants, either by agreement between Co-Lead Class Counsel and Counsel for the NFL Parties, subject to approval by the Special Master (or the Court after expiration of the term of the Special Master and any extension(s) thereof), or by application by Co-Lead Class Counsel or Counsel for the NFL Parties to the Court. The Qualifying Diagnoses shall generally be reviewed in the order in which they are received.

Section 6.5 Qualified MAF Physicians

(a) Within ninety (90) days after the Effective Date, the Claims Administrator will establish and maintain a list of Qualified MAF Physicians eligible to provide Qualifying Diagnoses. Each Qualified MAF Physician shall be approved by Co-Lead Class Counsel and Counsel for the NFL Parties, which approval shall not be unreasonably withheld. To the extent a Retired NFL Football Player is examined by a Qualified MAF Physician, such visit and examination shall be at the Retired NFL Football Player's own expense.

(b) The Claims Administrator will select Qualified MAF Physicians based on the following criteria: (a) education, training, licensing, credentialing, board certification, and insurance coverage; (b) ability to provide the specified examinations necessary to make Qualifying Diagnoses; (c) ability to provide all required examinations and services in a timely manner; (d) insurance accessibility; and (e) geographic proximity to Retired NFL Football Players. Under no circumstances will a Qualified MAF Physician be selected or approved who has been convicted of a crime of dishonesty, or who is serving on or after the Final Approval Date as a litigation expert consultant or expert witness for an Opt Out, or his, her or its counsel in connection with litigation relating to the subject matter of the Class Action Complaint. If selected and approved, under no circumstances shall a Qualified MAF Physician continue to serve in that role if convicted of a crime of dishonesty and/or thereafter retained as a litigation expert consultant or expert witness for an Opt Out, or his, her or its counsel in connection with litigation relating to the subject matter of the Class Action Complaint.

(c) In order to be eligible for selection, each Qualified MAF Physician must provide the following information to the Claims Administrator: (a) state professional license number; (b) National Provider Identifier; (c) board-certification information; (d) evidence of proper licensing and insurance coverage under applicable state laws; (e) experience, including number of years as a healthcare provider; (f) primary and additional service locations; (g) mailing and billing addresses; (h) tax identification information; (i) ability to provide all required examinations and services in a timely manner; (j) capacity for new patients; (k) appointment accessibility; (l) languages spoken;

EXHIBIT C

Thursday, March 15, 2018 at 11:16:40 AM Eastern Daylight Time

Subject: [Redacted] Audit
Date: Monday, December 11, 2017 at 7:37:31 PM Eastern Standard Time
From: Brad Sohn
To: obrown@browngreer.com
CC: David Smith, Scott George, [REDACTED; REDACTED]

Dear Orran:

On behalf of the [REDACTED], I am sending you this email, having first had occasion to speak with David Smith from your office. I note that David worked with me on this quite quickly and attempted to be as responsive as I believe he could have possibly been. Unfortunately, this is a tricky one. And so, having first huddled with the clients, I now come directly to you.

It is our understanding that an audit, pursuant to Section 10.3, will be commenced shortly as to the [REDACTED] claim. [REDACTED], whom you've met, is quite frustrated, as I'm sure you understand. She has asked for some answers to the following. She further asked, and I agree wholeheartedly, for some information in *advance* of an audit, as opposed to during its process. Hence my email now and not upon first receiving the audit document.

1. First, we have concerns regarding the NFL Parties' purported audit right at this juncture.

Section 10.3(h) does not set forth a specific time-limitation on appeals; we agree there. Nevertheless, this same language very clearly contemplates audits as *preceding* and not *following* appeals. The language references payment upon "completion of an audit" and still subject to an appeal. Obviously, here, there has been an appeal and the NFL Parties lost. If it audit-rights are NOT read as having closed by the time of an appeal, there is simply no other reading of this language than that the NFL parties enjoy audit-rights in perpetuity.

That may well be the case. But, if the NFL Parties enjoy audit-rights in perpetuity, then they are also not prejudiced by having these funds released. In other words, they can seek a TRO/PI; they can contact the U.S. Attorney for the Southern District of Florida to pursue criminal prosecution; they still have rights. The problem here is that your solution (and apologies if my useage of the word "your" is inaccurate) to de-list the payment from the approval list AND perform a post-appeal audit—one permitted to span an indefinite time-period, no less—leaves the NFL Parties' rights fully intact while completely trampling my clients' rights.

The [REDACTED] award, as you know, has now been twice-approved (thrice,

if you count SM Pritchett's opinion) by multiple MAF doctors and was rooted in well-documented and decade-long neurodegenerative decline, as found by the NFL which deemed him totally disabled back in 2011. If the funds remain in the NFL Parties' possession (or at least not in my clients' possession), then my clients lose exceedingly valuable earnings on it. No matter the calculation, this family is losing well over 100k/year (indeed possibly double that) as their claim remains entangled in an audit that is highly questionable.

As a proposed compromise, I ask that this claim be paid but placed into an interest-bearing account. We would not object to BG taking possession of the funds for this purpose. That might be a means through which to soften the blow.

2. Second, while we vehemently deny that any omission/misrepresentation/concealment of material fact has ever taken place, we will of course comply with the terms of any audit. Nevertheless, we request some additional information.

   a. Advance notice in writing as to the duration of the audit and its scope.

   b. Advance notice in writing of the clients' rights, should there an adverse determination, e.g., do they appeal to the Special Master? The Court? The third circuit?

   c. Advance notice in writing of the NFL Parties' rights in the event of an adverse determination for them, to the extent Section 10.3(h) does not compel immediate payment.

   d. Advance notice in writing of Brown Greers' function in the audit process (e.g., references to the settlement agreement) along with notice of AAP involvement in connection with purported evidence of "fraud." In other words: we see nothing under Section 9.8 that indicates an AAP member would be permitted to advise Brown Greer. We are troubled by either scenario. In other words, the idea that your firm would need to make a medical decision absent a doctor. But we are equally if not more troubled by the AAP's being used – once again – as an end-run to the MAF.

Our preference would be that the Court explain its thoughts on this while the money accrues interest. But I understand this may not be feasible. What is unfair to my clients, and I hope you agree, is to repeatedly subject them to additional steps, only to tell them that the NFL has

indefinite permission to claw back the award without any disincentive whatsoever.

Thank you very much for your time, and again I apologize for sending this directly to you.

Brad

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March 16, 2018

VIA E-MAIL

Mr. Orran Brown
BrownGreer, PLC
250 Rocketts Way
Richmond, Virginia 23231

RE: Post-Appeal Audits of Post-Effective-Date Qualifying Diagnosis

Dear Orran,

This letter follows our conversation, in which you did not disagree with my stated belief that the Court would benefit by learning of this matter. I have documented the nine-month-long saga involving my clients' post-effective-date MAF-Diagnosis-based Claim Package and ask, so long as you deem it appropriate, that you share this letter with the Court. This award's delayed payment and the vehicles driving that delay expose glaring problems with aspects of this still-nascent process: (1) the NFL is using post-appeal claim-audits to seek *de facto* second-appeals; and (2) through post-appeal claim-auditing, the NFL is vaulting NFL-unfavorable MAF Physician Qualifying Diagnoses, supplanting those in favor of an AAP panel member's (hopefully different) medical judgment. Both of these protections (appeals and audits) are important; I do not write to question them. I simply and strongly condemn their uses as strategy; these protections are not being used as a shield, but as a sword; this is wrong and plainly consistent with the bargain.

Before proceeding, I begin with some important background: death/CTE, ALS, and Parkinson's claims are all highly objective medical decisions. Simply, either one has one of these; or they don't. And while I believe the NFL strived for this level of certainty in every diagnosis, that is simply not the case with Alzheimer's Disease. Alzheimer's Disease cannot *ever* be definitive until death. Many people hypothesize that President Reagan had this disease while *in office*. Thus, in life, its diagnostic features will *always* turn, at least to some extent, on medical judgments and a series of clinically correlating indicators. This fact is material when considering the NFL's use of audits and appeals here, particularly with a post-effective-date claim that theoretically is "automatic" once a MAF Physician renders a Qualifying Diagnosis. In other words, these inquiries—if unchecked—seemingly create an *objective* standard to second-guess a highly subjective medical judgment. Such judgment was theoretically accounted for when the approved list of MAF Physicians was created in the first place.

I. In June of 2017, this family submitted a Claim Package, having visited a MAF Physician who arrived at a Qualifying MAF Diagnosis.

My clients are a 41-year-old disabled player and his family. His documented impairments date back to at least 2010. The player receives social security from an organic brain disease and NFL total/permanent neurocognitive disability benefits. Prior to retaining me, the

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player (through his wife) submitted a highly detailed, post-effective-date Claim that included positive neuropsychological testing (performed in 2010, 2012, and 2017), positive FDG and amyloid PET scans (revealing Alzheimer's plaques), DTI MRI (showing axonal sheering) and a MAF Physician's substantial evaluation. Based on the foregoing, a MAF Physician located very close to their home diagnosed this player, post effective date, with Alzheimer's Disease.

Although the family's claim was submitted in late June, the NFL began by contesting the first Diagnosing MAF Physician's administration, recommending that the MAF Physician be subjected to an audit. That fact became apparent to my clients after members of Brown Greer sought to interview his wife, and requested billing invoices. We in no way condemnt that audit's propriety. We mention it because the player's wife grew concerned their claim might incur a major delay on account of some wrong-doing by a doctor that they had unwittingly backed into. For that reason, the family booked a second MAF Physician appointment at its own expense, selecting this second MAF Physician located very close to their home from the approved list. Although paying for yet more evaluations left this family feeling mildly frustrated, the player had a decade-long history of profound neurodegenerative illness and ultimately a $3.5M claim; so, with nothing to worry about on the diagnosis (or so the family thought), the cost of a second evaluation would be nominal in relation to the claim's value and any potential earnings lost on the award during a delay.

II. A second MAF Physician diagnoses Alzheimer's to no avail.

The second MAF Physician's examination was no different for the family. Once more, the MAF Physician reviewed all prior records and studies, which spanned a decade or so and told a rather harrowing story of severe cognitive decline. Perhaps unsurprisingly, after this second MAF Physician reviewed all past records, performed his own highly-detailed evaluation, examined the player face-to-face for an hour, and spent additional time interviewing the spouse, he also diagnosed AD. That should have spelled game over; it did not.

Waiting until the final day before appeal rights were to have run, the NFL appealed the second post-effective-date diagnosis. In its appeal, the NFL adduced (as I have seen it do elsewhere) zero new evidence, and simply took the opportunity to trying arguing that no MAF Physician could have concluded what was (twice) concluded, based upon the medical evidence. While the correct result was found in the end (the NFL lost), the NFL's dubious appeal of a purportedly sacrosanct MAF Diagnosis left me with concerns. At a minimum, it succeeded by staving off payment for another few months, retaining earnings on the $3.5M claim. But, *now the claim was on the payment list*, we all thought. Not so fast. Special Master Pritchett's ruling would hardly prove to be the end of the road.

III. With their appeal rights exhausted, the NFL Parties scream fraud.

Again, waiting until the last possible moment, until after the Special Master denied its appeal, the NFL began screaming fraud and demanding the claim be removed from the payment list. It sought an audit of the monetary award on account of a four-year-old "YouTube.com" video, showing a three-minute-long video clip of the player speaking publicly (to a youth group, notably

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a youth group disclosed to the second MAF Physician had actually documented in his MAF report diagnosing Alzheimer's.) This was a proverbial smoking gun, according to the NFL.

On December 11, 2017, having been retained by the family, I emailed Brown Greer (specifically you) to voice my significant concerns. *See* Letter to Brown, O. from Sohn, B. re Claim Audit, dated December 11, 2017 (*attached as Exhibit "A".*) Without recapitulating the entirety of that email's contents here, I noted the problems inherent in post-appeal audits proceeding identically to pre-appeal audits, those fundamentally being: (a) that doing so incentivized bad-faith audits and devalued claims (due to lost earnings); and (b) that the nature of this audit conceivably operated as an end-run around a MAF Physician's Qualifying Diagnosis.

Approximately during the week of November 13, 2017, I learned that an audit would be taking place on the claim and that the claim had been removed from the November 10th payment list. The NFL argued that outdated, three-minute-long footage reasonably gave rise to concerns a material misrepresentation / concealment / omission had taken place, thereby accusing both MAF physicians, multiple neuropsychologists, the PET-scanning service and radiologist, the player, and his family of fraud. I received formal notice of audit on or about December 11, 2017. Again: more earnings lost on the award.

At that time, your office requested copies of the videos and (essentially) any other videos displaying functional impairments related to the claim. My clients were upset at the requests, the label of "fraud", and delays that felt (to them) increasingly suspicious. Of course, what choice did they have at this (or any) point? We complied, expending more time and energy, and also subjecting this understandably emotional family to more anxiety.

IV. The Diagnosing MAF Physician himself rebuffs the videos as constituting a fraud, but the claim remains in audit.

On February 17, 2017, on behalf of my clients, and after a generous extension that your office granted to me in light of personal matters, I submitted all documents responsive to the audit request. In addition, I provided (a) a sworn declaration from the player's wife and (b) a letter signed by the MAF Physician. The player's wife provided context for the old video clips and also re-affirmed something important: She had directly advised the MAF Physician of her husband's increasingly-limited volunteer-work with at-risk children in their community at the time of their multi-hour appointment; thus (in her mind and not unreasonably) *how could anyone deem this fraud*?

The MAF Physician's letter proved even more powerful, and—in our view—dispositive of the inquiry. That letter was unequivocal in disagreeing that these video clips had evinced a fraud, even under the standard applied in the Settlement Agreement (e.g., not requiring intent to deceive; only requiring omitted information.) After spending additional time viewing the entirety of the videos produced, he stated the following:

> none of these videos change or would have affected my findings, as reported last August. The various videos were posted significantly earlier in time than the time at which I evaluated Mr. [name

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> redacted.] Further, I understand the clips within these videos capturing [name redacted] speaking and driving to have been recorded possibly as far back as one year prior to their posting (e.g., at some point between the latter half of 2014 and early 2015.) ***Thus, I continue to feel comfortable in my diagnosis of Alzheimer's Disease, made significantly later in time from the videos, and made in light of the totality of information as personally observed and reviewed.***

(*Emphasis added.*) And that development is the central cause for my concern.

The Settlement Agreement takes great pains to establish procedures for appeals (§ 9.5) as it does for audits (§ 10.3), and draws a clear distinction between these two procedures. An appeal tests the sufficiency of medical support underpinning a Qualifying Diagnosis. An audit—when not random—plainly requires (*see id*) reasonable grounds to believe a *material* concealment / omission / misrepresentation occurred; more simply (as our conversations confirm) an audit asks if a claim would have still been favorably determined in light of then-unknown information. *Id.*

Here, the MAF Physician—himself—literally dispelled the materiality of this supposed *then-unknown* evidence, in writing. Yet the audit continues.

V. This audit improperly subjects the Qualified MAF Physician's Qualifying Diagnosis to unchecked and limitless scrutiny that can never be dispositive.

On March 14, 2017, I had occasion to speak separately, both with you and also with your team-member handling the claim-audit. As always, I appreciated your cordiality and prompt attention. You really do the impossible when it comes to being responsive, Orran. I state that again because this is not an attack on you, your team. Nevertheless, the substance of these conversations left me frustrated.

First, I learned that this claim would not yet be removed from audit, following Brown Greer's review of the requested information provided; I still cannot reconcile that fact with the statements made in the MAF Physician's letter. Second, I learned a forthcoming request would be seeking yet more information for the audit. This time, because my client's declaration referenced her husband's relatively lengthy history of illness, as first documented in 2010, your office sought the 2010 medical record, which I happily provided, literally within several hours of learning you wanted it. But.

I am baffled by this additional request's timing, along with the request itself. Why was it made *only now*? When I posed this question directly to you, your reply was "that's a good point and I don't have an answer for you." Second, as I also pointed out late Wednesday night, this very 2010 record was already documented *directly* within the second Qualified MAF Physician's Diagnosing MAF Physician Report. In other words, that evidence is already within the record; what could it possibly add, particularly when the audit vectors to *materially withheld* information?

The frustrating takeaway is that the audit process, at least with respect to this claim, makes the Qualified MAF Physician's worthless. The NFL has used these two protections so that it can substitute an AAP panel-member's judgment anytime it seeks to shirk payment. Once more:

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This claim is *not*, by way of an easy example, a CTE/Death claim in which the NFL learns the player was alive. This claim involves a nuanced medical judgment-call by a doctor permitted to make such a judgment. In other words, we know at this point that the player isn't "faking" these ailments, which have been ongoing for years. And we also know that the concerning, later-discovered information did not "move the dial" for the MAF Physician. Given these facts, the only thing that the audits and appeal serve to do is provide vehicles for other doctors to second-guess a physician purportedly immune from such second-guessing.

The problem with that is that this entire settlement was sold on a wholly different premise: namely prompt and hassle-free payments for those who are sick. Indeed, at the outset, my clients were proceeding *pro se* because they understood that the process had been designed to be so easy that they would not even need a lawyer. Instead, one of the sickest young players in this MDL has waived his rights and is being beaten down with litigation tactics.

Perhaps worse, how can this process ever conclude? In other words, let's suppose Brown Greer takes the claim out of audit and orders its disbursement. As no one disputes, the Settlement Agreement gives the NFL a post-disbursement audit-right in perpetuity that it may exercise with unbridled discretion; can the NFL therefore follow this player around with surveillance cameras and re-litigate these issues if he ever has a good enough day to go to the grocery store? That sounds ridiculous, but imagine if Ronald Reagan was a football player and not an actor. The world knows he had Alzheimer's, yet he would be audited to oblivion. Once more, the NFL deserves and has every right to use such a tool—to no one's dismay—if, for example, they discover things like a CTE/death claim having been faked. Even less extreme: we certainly know that many pre-effective date claims were (politely stated) aggressively assembled. But this family waited until the program began. And there will truly never be a definitive answer on this claim, at least never more definitive than today. There is truly no way of gaining certainty for a claim like this.

If left unchecked, post-appeal claim-audits following the form of this claim will make mincemeat out of Section 6.3(b) (providing that "[f]ollowing the Effective Date, a Qualifying Diagnosis ... ***shall be made only*** by Qualified MAF Physicians ...") In this instance, the NFL first sought to ignore the role of the MAF Physician by re-weighing the existing medical evidence in its own favor. Once that failed, the audit, also driven by the NFL, has operated to do precisely the same thing. In other words, if one does not accept a MAF Physician's *own word* as to what evidence was or was not material to his *own pre-blessed diagnosis*—particularly in the instance where the subject QD is Alzheimer's, a diagnosis of art—then everyone's claims simply depend on five AAP panel members.

Possibly my only role in aiding the collective process here is to identify this claim as a vehicle for addressing what is increasingly a huge problem. I would be remiss if I did not reiterate that I do not see this as a "Brown Greer" or a "Class Counsel" problem; I see this as a problem of the NFL's use of the Settlement Agreement in an offensive and improper manner. The agreement itself may be locked in, but there remain—in my view—means to better control abuse of process. Specifically, I would ask that you present my proposal, as made to you back on December 11, 2017. I agree wholeheartedly that the NFL should not be without recourse, should

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it discover later that someone's claim was faked. But we need to address these post-effective-date, post-appeal claim-audits differently. The NFL's rights must be considered in tandem with, and not above each Settlement Class Member's rights. One could therefore order payment disbursed, but placed into escrow to retain its earnings, post-appeal, so that *neither* party's rights are impaired (not simply the NFL's rights); certainly, and well within the confines of what has already been agreed to, one can conceive of many options to dis-incentivize what have become wildly abusive tactics by the NFL.

Even if this family ultimately receives its claim, it has lost, while the NFL has "won." Specifically, the family's loss is conservatively estimated at somewhere between $50,000 and $125,000 during the pendency of these series charades. Particularly when aggregated, using these tactics repeatedly is strongly in the NFL's financial best interest. Precisely why something must be done.

I remain happy to discuss this matter at any point with the Parties, the Court, the Special Masters, or you, and hope you receive it in the constructive manner intended.

Warm regards,

BRS/brs

Bradford R. Sohn

EXHIBIT D

Summary of Initial Prevalence Rates

	Sample Data	Remaining Population (no diagnosis information available)			
Cognitive Impairment	Observed Prevalence in Sample Group	Non-Deceased Plaintiff	Non-Deceased Non-Plaintiff	Deceased Plaintiffs[16]	Deceased Non-Plaintiffs
None/Level 1	89.0%	94.7%	97.4%	0.0%	98.7%
Level 1.5	4.1%	2.1%	1.0%	39.5%	0.5%
Level 2[17]	5.8%	2.9%	1.5%	55.1%	0.7%
ALS	0.6%	0.3%	0.1%	5.4%	0.1%
CTE[18]	0.5%	0.0%	0.0%	0.0%	0.0%

(b) **Initial age assignment.** For the same reasons that we adjusted the prevalence rates for the sample group, we also adjusted the initial age assignments of the sample group to reflect that the Qualifying Diagnoses would be diagnosed within the 19,000 players at somewhat later ages than the sample group. We did so based on epidemiological studies we reviewed that discuss prevalence of the diagnoses by age. As has been discussed, because plaintiffs—particularly those who provided diagnosis information—are more likely to have Qualifying Diagnoses, we assume a meaningful selection bias in the sample data set. This selection bias results in higher initial prevalence rates, particularly at younger ages. We, therefore, adjusted for this bias and made adjustments to the initial age results from the sample group. Our adjustments still result in a

[16] There are only 32 deceased plaintiffs for whom we do not have diagnosis information. Of the 45 deceased plaintiffs for whom we have diagnosis information, 44 have a Qualifying Diagnosis based upon the information provided to us.

[17] Includes Level 2, Alzheimer's and Parkinson's.

[18] We have assumed that all players diagnosed with CTE (based on public information) will participate in the Settlement and claim monetary awards. Because the Settlement will not provide monetary awards for CTE for players diagnosed with CTE after the date of Preliminary Approval, the model assumes that no other players will be diagnosed with CTE.

significantly higher prevalence in younger age groups than in the general population. As just one example, prevalence of dementia, Alzheimer's, and Parkinson's in the general population below age 50 is less than 1%. In fact, it is difficult to find a single study showing prevalence rates of those conditions below age 50 and the rates between ages 60 to 69, which are necessarily higher than the rates below age 60, range from <0.1 to 2.1%. By contrast, the prevalence rate in the sample group below age 50 is nearly 200 times that observed in the general population (based on a general population prevalence rate of 0.01%, which we believe is a reasonable estimate based on the lack of epidemiology related to the population below age 50). There is no medical literature suggesting a relative risk of anything close to that magnitude for football players or even non-football players who experience head trauma. Thus, for the 19,000 players that we project have a current Qualifying Diagnosis, we made a reasonable assumption resulting in a prevalence rate below age 50 for the overall class of retired players that is 35 times the general population rate. Thus, in making this assumption, we believe we are erring on the side of forecasting that players with current Qualifying Diagnoses will have those diagnoses at earlier ages (and thus receive higher monetary awards). This is consistent with the conservative approach we have taken in making our assumptions.

Initial Age Distribution of Qualifying Diagnoses

	Initial Age Distribution	
Ages	Observed Age in Sample Group for Qualifying Diagnoses	Assumed Distribution
49 & Younger	40%	2%
50 – 59	15%	15%
60 – 69	20%	35%
70 – 79	22%	38%
80 +	3%	10%

(c) **Progression**.

(i) In addition to determining current prevalence rates, we also made assumptions regarding progression rates over the 65-year term of the Settlement. Using the current prevalence rates of Qualifying Diagnoses across the entire class as a starting point, we projected how the conditions of players without a Qualifying Diagnosis (asymptomatic and Level 1) and players who have current diagnoses of Level 1.5 would progress over time. We believe our projection assumptions are consistent with the various epidemiological studies that we reviewed. We also discussed the reasonableness of these assumptions with Dr. Yaffe, who concurred that they were reasonable. Moreover, we validated the results of our progression assumptions by comparing the overall prevalence rates (by Qualifying Diagnosis and age) generated by the model against expectations in the general population based on

EXHIBIT E

Participation in the BAP does not prevent the retired player from filing a claim for a monetary award. For the next 65 years, retired players will be eligible for compensation paid from the Monetary Award Fund if the player develops a Qualifying Diagnosis (*see* Question 14). Participation in the BAP also will help ensure that, to the extent the retired player receives a Qualifying Diagnosis in the future, he will receive the maximum monetary award to which he is entitled (*see* Question 20).

13. How does a retired player schedule a baseline assessment examination and where will it be done?

Retired players need to register for Settlement benefits before they can get a baseline assessment examination. Registration for benefits will not be available until after Final Settlement Approval. **However, a retired player may provide his name and contact information now at www.NFLConcussionSettlement.com or by calling 1-800-000-0000. This ensures that the retired player will receive additional notice about the registration process and deadlines when it becomes available.**

The BAP Administrator will send notice to those retired players determined during registration to be eligible for the BAP, explaining how to arrange for an initial baseline assessment examination. The BAP will use a nationwide network of qualified and independent medical providers who will provide both the initial baseline assessment as well as any further testing and/or treatment. The BAP Administrator, which will be appointed by the Court, will establish the network of medical providers.

MONETARY AWARDS

14. What diagnoses qualify for monetary awards?

Monetary awards are available for the diagnosis of ALS, Parkinson's Disease, Alzheimer's Disease, Level 2 Neurocognitive Impairment (*i.e.*, moderate Dementia), Level 1.5 Neurocognitive Impairment (*i.e.*, early Dementia), or Death with CTE (the "Qualifying Diagnoses"). A Qualifying Diagnosis may occur at any time until the end of the 65-year term of the Monetary Award Fund.

If a retired player receives a monetary award based on a Qualifying Diagnosis, and later is diagnosed with a different Qualifying Diagnosis that entitles him to a larger monetary award than his previous award, he will be eligible for an increase in compensation. This would also apply to Derivative Claimants.

Qualifying Diagnoses must be made by approved qualified specialists. If and when Final Settlement Approval is obtained, the Claims Administrator will create and maintain a list of specialists who may make an authorized Qualifying Diagnoses if no such diagnosis has already been made by a qualified specialist before the Settlement is effective.

15. Do I need to prove that playing professional football caused the retired player's Qualifying Diagnosis?

No. You do not need to prove that a retired player's Qualifying Diagnosis was caused by playing professional football or that he experienced head injuries in the NFL, AFL, World League of American Football, NFL Europe League, or NFL Europa League in order to receive a monetary award. The fact that a retired player receives a Qualifying Diagnosis is sufficient to be eligible for a monetary award.

You also do not need to exclude the possibility that the Qualifying Diagnosis was caused or contributed to by amateur football or other professional football league injuries or by various risk factors linked to the Qualifying Diagnosis.

16. How much money will I receive?

The amount of money you will receive depends on the retired player's:

- Specific Qualifying Diagnosis,
- Age at the time of diagnosis (*see* Question 17),
- Number of seasons played or practiced in the NFL or the AFL (*see* Question 18),
- Diagnosis of a prior stroke or traumatic brain injury (*see* Question 19), and
- Participation in a baseline assessment exam (*see* Question 20).

The amount of money you will receive also depends on whether:

- There are any legally enforceable liens on the award,
- Any retainer agreement with an attorney, and
- The Court makes any further assessments (*see* Question 34).

Certain costs and expenses related to resolving any liens for Settlement Class Members will be paid out of such Settlement Class Members' Monetary Awards or Derivative Claimant Awards.

The table below lists the maximum amount of money available for each Qualifying Diagnosis before any adjustments are made.

QUALIFYING DIAGNOSIS	MAXIMUM AWARD AVAILABLE
Amyotrophic lateral sclerosis (ALS)	$5 million
Death with CTE (diagnosed after death)	$4 million
Parkinson's Disease	$3.5 million
Alzheimer's Disease	$3.5 million
Level 2 Neurocognitive Impairment (*i.e.*, moderate Dementia)	$3 million
Level 1.5 Neurocognitive Impairment (*i.e.*, early Dementia)	$1.5 million

Monetary awards may be increased up to 2.5% per year during the 65-year Monetary Award Fund term for inflation.

To receive the maximum amount outlined in the table, a retired player must have played for at least five Eligible Seasons (*see* Question 18) and have been diagnosed when younger than 45 years old.

Derivative Claimants are eligible to be compensated from the monetary award of the retired player with whom they have a close relationship in an amount of 1% of that award. If there are multiple Derivative Claimants for the same retired player, the 1% award will be divided among the Derivative Claimants according to the law where the retired player (or his Representative Claimant, if any) resides.

EXHIBIT F

there are multiple Derivative Claimants asserting valid claims based on the same subject Retired NFL Football Player, the Claims Administrator will divide and distribute the Derivative Claimant Award among those Derivative Claimants pursuant to the laws of the domicile of the Retired NFL Football Player (or his Representative Claimant, if any).

ARTICLE VIII
Submission and Review of Claim Packages and Derivative Claim Packages

Section 8.1 All Settlement Class Members applying for Monetary Awards or Derivative Claimant Awards must submit Claim Packages or Derivative Claim Packages to the Claims Administrator.

Section 8.2 Content

(a) The content of Claim Packages will be agreed to by Co-Lead Class Counsel and Counsel for the NFL Parties, and will include, without limitation: (i) a Claim Form with the Personal Signature of the Retired NFL Football Player (or Representative Claimant) either on the Claim Form or on an acknowledgement form verifying the contents of the Claim Form; (ii) a Diagnosing Physician Certification; (iii) medical records reflecting the Qualifying Diagnosis; (iv) a HIPAA-compliant authorization form; and (v) records in the possession, custody or control of the Settlement Class Member demonstrating employment and participation in NFL Football.

(i) Representative Claimants of Retired NFL Football Players who died prior to the Effective Date do not need to include a Diagnosing Physician Certification in the Claim Package if the physician who provided the Qualifying Diagnosis, as set forth in Exhibit 1, also died prior to the Effective Date or was deemed by a court of competent jurisdiction legally incapacitated or incompetent prior to the Effective Date. Instead, the Representative Claimant must provide evidence of that physician's death, incapacity or incompetence and of the qualifications of the diagnosing physician. For the avoidance of any doubt, all other content of Claim Packages must be submitted, including medical records reflecting the Qualifying Diagnosis.

(ii) In cases where a deceased Retired NFL Football Player received a Qualifying Diagnosis but the medical records reflecting the Qualifying Diagnosis are unavailable because of a force majeure type event (*e.g.*, flood, hurricane, fire), the Claims Administrator, upon petition by the Representative Claimant, may determine the Claim Package to be valid without the medical records if the Representative Claimant makes a showing of a reasonable effort to obtain the medical records from any available source and presents a certified death certificate referencing the Qualifying Diagnosis made while the Retired NFL Football Player was living. For the avoidance of any doubt, the Claims Administrator has the sole discretion to determine the sufficiency of this showing, subject to the appeal rights set forth in Section 9.5. If the unavailability of medical records also causes the diagnosing physician to be unable to provide a Diagnosing Physician Certification, the Claims Administrator, upon petition by

the Representative Claimant, and in addition to the presentation of a certified death certificate referencing the Qualifying Diagnosis made while the Retired NFL Football Player was living, may instead allow an accompanying sworn affidavit from the diagnosing physician attesting to the reasons why the diagnosing physician is unable to provide a Diagnosing Physician Certification without the medical records. The Claims Administrator has the sole discretion to determine the sufficiency of this showing, subject to the appeal rights set forth in Section 9.5.

(iii) In cases where a Retired NFL Football Player has received a Qualifying Diagnosis and the diagnosing physician who provided the Qualifying Diagnosis, as set forth in Exhibit 1, has died or has been deemed by a court of competent jurisdiction legally incapacitated or incompetent prior to the Effective Date, or otherwise prior to completing a Diagnosing Physician Certification, the Retired NFL Football Player (or his Representative Claimant, if applicable) may obtain a Diagnosing Physician Certification from a separate qualified physician for the Qualifying Diagnosis as specified in Exhibit 1 based on an independent examination by the qualified physician and a review of the Retired NFL Football Player's medical records that formed the basis of the Qualifying Diagnosis by the deceased or legally incapacitated or incompetent physician. If the same Qualifying Diagnosis is found by both doctors, the date of Qualifying Diagnosis used to calculate Monetary Awards shall be the date of the earlier Qualifying Diagnosis.

(b) The content of Derivative Claim Packages will be agreed to by Co-Lead Class Counsel and Counsel for the NFL Parties, and will include, without limitation: (i) a Derivative Claim Form with the Personal Signature of the Derivative Claimant either on the Derivative Claim Form or on an acknowledgement form verifying the contents of the Derivative Claim Form; and (ii) records sufficient to verify the relationship with the subject Retired NFL Football Player or deceased Retired NFL Football Player that properly and legally provides the Derivative Claimant the right under applicable state law to sue independently and derivatively.

(c) All statements made in Claim Forms, Derivative Claim Forms, any acknowledgement forms, and Diagnosing Physician Certifications will be sworn statements under penalty of perjury.

(d) Each Settlement Class Member has the obligation to submit to the Claims Administrator all of the documents required in Section 8.2 to receive a Monetary Award or Derivative Claimant Award.

Section 8.3 Submission

(a) Settlement Class Members must submit Claim Packages and Derivative Claim Packages to the Claims Administrator in accordance with Section 30.15.

(i) Claim Packages must be submitted to the Claims Administrator no later than two (2) years after the date of the Qualifying Diagnosis or

EXHIBIT G

INJURY DEFINITIONS

DIAGNOSIS FOR BAP SUPPLEMENTAL BENEFITS

Level 1 Neurocognitive Impairment

(a) For Retired NFL Football Players diagnosed through the BAP, a diagnosis of Level 1 Neurocognitive Impairment must meet the criteria set forth in subsections (i)-(iv) below:

(i) Concern of the Retired NFL Football Player, a knowledgeable informant, or the Qualified BAP Provider that there has been a decline in cognitive function.

(ii) Evidence of moderate cognitive decline from a previous level of performance, as determined by and in accordance with the standardized neuropsychological testing protocol annexed in Exhibit 2 to the Settlement Agreement, in two or more cognitive domains (complex attention, executive function, learning and memory, language, perceptual-spatial), provided one of the cognitive domains is (a) executive function, (b) learning and memory, or (c) complex attention.

(iii) The Retired NFL Football Player exhibits functional impairment generally consistent with the criteria set forth in the National Alzheimer's Coordinating Center's Clinical Dementia Rating scale Category 0.5 (Questionable) in the areas of Community Affairs, Home & Hobbies, and Personal Care.

(iv) The cognitive deficits do not occur exclusively in the context of a delirium, acute substance abuse, or as a result of medication side effects.

(b) Level 1 Neurocognitive Impairment, for the purposes of this Settlement Agreement, may only be diagnosed by Qualified BAP Providers during a BAP baseline assessment examination, with agreement on the diagnosis by the Qualified BAP Providers.

QUALIFYING DIAGNOSES FOR MONETARY AWARDS

1. **Level 1.5 Neurocognitive Impairment**

(a) For Retired NFL Football Players diagnosed through the BAP, a diagnosis of Level 1.5 Neurocognitive Impairment must meet the criteria set forth in subsections (i)-(iv) below:

(i) Concern of the Retired NFL Football Player, a knowledgeable informant, or the Qualified BAP Provider that there has been a severe decline in cognitive function.

(ii) Evidence of a moderate to severe cognitive decline from a previous level of performance, as determined by and in accordance with the standardized neuropsychological testing protocol annexed in Exhibit 2 to the Settlement Agreement, in two or more cognitive domains (complex attention, executive function, learning and memory, language, perceptual-spatial), provided one of the cognitive domains is (a) executive function, (b) learning and memory, or (c) complex attention.

(iii) The Retired NFL Football Player exhibits functional impairment generally consistent with the criteria set forth in the National Alzheimer's Coordinating Center's Clinical Dementia Rating (CDR) scale Category 1.0 (Mild) in the areas of Community Affairs, Home & Hobbies, and Personal Care. Such functional impairment shall be corroborated by documentary evidence (*e.g.*, medical records, employment records), the sufficiency of which will be determined by the physician making the Qualifying Diagnosis. In the event that no documentary evidence of functional impairment exists or is available, then (a) there must be evidence of moderate to severe cognitive decline from a previous level of performance, as determined by and in accordance with the standardized neuropsychological testing protocol annexed in Exhibit 2 to the Settlement Agreement, in the executive function cognitive domain or the learning and memory cognitive domain, and at least one other cognitive domain; and (b) the Retired NFL Football Player's functional impairment, as described above, must be corroborated by a third-party sworn affidavit from a person familiar with the Retired NFL Football Player's condition (other than the player or his family members), the sufficiency of which will be determined by the physician making the Qualifying Diagnosis.

(iv) The cognitive deficits do not occur exclusively in the context of a delirium, acute substance abuse, or as a result of medication side effects.

(b) For living Retired NFL Football Players diagnosed outside of the BAP, a diagnosis while living of Level 1.5 Neurocognitive Impairment, *i.e.*, early dementia, based on evaluation and evidence generally consistent with the diagnostic criteria set forth in subsection 1(a)(i)-(iv) above, made by a Qualified MAF Physician or a board-certified or otherwise qualified neurologist, neurosurgeon, or other neuro-specialist physician, as set forth and provided in Sections 6.3(b)-(d) of the Settlement Agreement.

(c) For Retired NFL Football Players deceased prior to the Effective Date, a diagnosis of Level 1.5 Neurocognitive Impairment, *i.e.*, early dementia, based on evaluation and evidence generally consistent with the diagnostic criteria set forth in subsection 1(a)(i)-(iv)

above, made while the Retired NFL Football Player was living by a board-certified or otherwise qualified neurologist, neurosurgeon, or other neuro-specialist physician, or by a physician with sufficient qualifications in the field of neurology or neurocognitive disorders, as set forth and provided in Sections 6.3(c)-(e) of the Settlement Agreement.

2. **Level 2 Neurocognitive Impairment**

(a) For Retired NFL Football Players diagnosed through the BAP, a diagnosis of Level 2 Neurocognitive Impairment must meet the criteria set forth in subsections (i)-(iv) below:

(i) Concern of the Retired NFL Football Player, a knowledgeable informant, or the Qualified BAP Provider that there has been a severe decline in cognitive function.

(ii) Evidence of a severe cognitive decline from a previous level of performance, as determined by and in accordance with the standardized neuropsychological testing protocol annexed in Exhibit 2 to the Settlement Agreement, in two or more cognitive domains (complex attention, executive function, learning and memory, language, perceptual-spatial), provided one of the cognitive domains is (a) executive function, (b) learning and memory, or (c) complex attention.

(iii) The Retired NFL Football Player exhibits functional impairment generally consistent with the criteria set forth in the National Alzheimer's Coordinating Center's Clinical Dementia Rating (CDR) scale Category 2.0 (Moderate) in the areas of Community Affairs, Home & Hobbies, and Personal Care. Such functional impairment shall be corroborated by documentary evidence (*e.g.*, medical records, employment records), the sufficiency of which will be determined by the physician making the Qualifying Diagnosis. In the event that no documentary evidence of functional impairment exists or is available, then (a) there must be evidence of severe cognitive decline from a previous level of performance, as determined by and in accordance with the standardized neuropsychological testing protocol annexed in Exhibit 2 to the Settlement Agreement, in the executive function cognitive domain or the learning and memory cognitive domain, and at least one other cognitive domain; and (b) the Retired NFL Football Player's functional impairment, as described above, must be corroborated by a third-party sworn affidavit from a person familiar with the Retired NFL Football Player's condition (other than the player or his family members), the sufficiency of which will be determined by the physician making the Qualifying Diagnosis.

(iv) The cognitive deficits do not occur exclusively in the context of a delirium, acute substance abuse, or as a result of medication side effects.

(b) For living Retired NFL Football Players diagnosed outside of the BAP, a diagnosis while living of Level 2 Neurocognitive Impairment, *i.e.*, moderate dementia, based on evaluation and evidence generally consistent with the diagnostic criteria set forth in subsection 2(a)(i)-(iv) above, unless the diagnosing physician can certify in the Diagnosing Physician Certification that certain testing in 2(a)(i)-(iv) is medically unnecessary because the Retired NFL Football Player's dementia is so severe, made by a Qualified MAF Physician or a board-certified

or otherwise qualified neurologist, neurosurgeon, or other neuro-specialist physician, as set forth and provided in Sections 6.3(b)-(d) of the Settlement Agreement.

(c) For Retired NFL Football Players deceased prior to the Effective Date, a diagnosis of Level 2 Neurocognitive Impairment, *i.e.*, moderate dementia, based on evaluation and evidence generally consistent with the diagnostic criteria set forth in subsection 2(a)(i)-(iv) above, unless the diagnosing physician can certify in the Diagnosing Physician Certification that certain testing in 2(a)(i)-(iv) was medically unnecessary because the Retired NFL Football Player's dementia was so severe, made while the Retired NFL Football Player was living by a board-certified or otherwise qualified neurologist, neurosurgeon, or other neuro-specialist physician, or by a physician with sufficient qualifications in the field of neurology or neurocognitive disorders, as set forth and provided in Sections 6.3(c)-(e) of the Settlement Agreement.

3. **Alzheimer's Disease**

(a) For living Retired NFL Football Players, a diagnosis while living of the specific disease of Alzheimer's Disease as defined by the World Health Organization's International Classification of Diseases, 9th Edition (ICD-9), the World Health Organization's International Classification of Diseases, 10th Edition (ICD-10), or a diagnosis of Major Neurocognitive Disorder due to probable Alzheimer's Disease as defined in the *Diagnostic and Statistical Manual of Mental Disorders* (DSM-5), made by a Qualified MAF Physician or a board-certified or otherwise qualified neurologist, neurosurgeon, or other neuro-specialist physician, as set forth and provided in Sections 6.3(b)-(d) of the Settlement Agreement.

(b) For Retired NFL Football Players deceased prior to the Effective Date, a diagnosis of Major Neurocognitive Disorder due to probable Alzheimer's Disease consistent with the definition in *Diagnostic and Statistical Manual of Mental Disorders* (DSM-5), or a diagnosis of Alzheimer's Disease, made while the Retired NFL Football Player was living by a board-certified or otherwise qualified neurologist, neurosurgeon, or other neuro-specialist physician, or by a physician with sufficient qualifications in the field of neurology to make such a diagnosis, as set forth and provided in Sections 6.3(c)-(e) of the Settlement Agreement.

4. **Parkinson's Disease**

(a) For living Retired NFL Football Players, a diagnosis while living of the specific disease of Parkinson's Disease as defined by the World Health Organization's International Classification of Diseases, 9th Edition (ICD-9), the World Health Organization's International Classification of Diseases, 10th Edition (ICD-10), or a diagnosis of Major Neurocognitive Disorder probably due to Parkinson's Disease as defined in the *Diagnostic and Statistical Manual of Mental Disorders* (DSM-5), made by a Qualified MAF Physician or a board-certified or otherwise qualified neurologist, neurosurgeon, or other neuro-specialist physician, as set forth and provided in Sections 6.3(b)-(d) of the Settlement Agreement.

(b) For Retired NFL Football Players deceased prior to the Effective Date, a diagnosis of Parkinson's Disease, made while the Retired NFL Football Player was living by a board-certified or otherwise qualified neurologist, neurosurgeon, or other neuro-specialist

EXHIBIT H

From: Gene Locks <glocks@lockslaw.com>
Date: Mon, Jul 24, 2017 at 12:05 PM
Subject:
To: "Seeger, Chris" <cseeger@seegerweiss.com>

Chris:
I understand from our conversation over the weekend that you are unclear and possibly unaware of any written guidance the parties have furnished to doctors who are participating in the MAF program (and possibly the BAP program) or guidance given the AAP.

Let me clarify.

BrownGreer and your colleagues (Scott and Mike) made us aware that there is a manual agreed upon by the parties (NFL counsel and Seeger Weiss) that is being sent to physicians and neuropsychologists who are participating in the BAP and MAF programs. We were told that the manual provided guidance to the professionals about how to apply the BAP criteria and how to interpret relevant parts of the Agreement. We have also been told that there is a second manual agreed upon by the parties that has been sent to the AAP to provide guidance on how to apply the Agreement to Claims the AAP review.

As to both manuals, we have been told that Class Counsel is not permitted to see them. If you are unaware that the manuals even exist, that is of course a concern to us. Of even greater concern is the fact that Class Counsel has been excluded from this and every other aspect of implementing the Settlement. We believe this must be a design of NFL counsel to exclude all of us from the implementation process and to create what is essentially a newly formulated benefits plan that denies meritorious Claims based on alleged deficiencies that do not or should not apply.

Also, the parties developed alleged numerous "deficiencies" for pre-effective date Claims and instructed BrownGreer to impose those "deficiencies" on the Claims as they are filed. Some are substantive "deficiencies" and largely founded on the idea that if the Claim does not conform to the criteria of the BAP, the Claim is de facto deficient and must be remedied. This, of course, is not what the Agreement says; to the contrary, the Agreement says pre-effective date Claims must be "based on principles generally consistent with" the BAP. It also says that pre-effective date Claims are not subject to the same documentation requirements or the same diagnostic criteria. See 6.4(b). Some of the alleged "deficiencies" have no basis at all in the Agreement.
We have also learned that the parties have had extensive meetings with the Special Masters on these subjects, not one of which included any of us.

Our response to this is grave concern. We have been kept in the dark and carved out of the implementation process. We have been told we cannot participate at all, even though we are Class Counsel. Now we learn you are unaware of the information I have provided.

We seek a remedy to this at once, because we feel certain that NFL counsel has steered the Settlement ship into waters that serves the NFL interests alone and harms the players. Sol, Steve, and I represent nearly 2000 players. Seeger Weiss represents very few. Collectively we

know more about testing, qualified physicians, and how the Settlement should be interpreted to benefit the players.

We want to make this work as quickly and as effectively as possible. We cannot adequately fulfill our responsibilities as class counsel if we have no access to this information. Let's have a meeting to discuss this.

I thank you for your assistance.
Gene
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On Wed, Aug 30, 2017 at 11:40 AM, Chris Seeger <CSeeger@seegerweiss.com> wrote:

Because it's a small world, just about everything you guys say to your clients winds up reported beyond your group. I'm not going to get into all the misinformation your firm has spread about the settlement and the claim administrator or the relationships you guys have with Fred Willis and others (at least not right now). I'm writing to remind both of you that if you have specific concerns about the implementation of the settlement regarding how the Settlement Agreement is being implemented, I would appreciate it if you could bring those concerns to my attention so I could investigate before you tell players and lawyers involved information that isn't accurate. I'm happy to schedule a call at any time and have Brown Greer on the call. Ball is in your court.

Sent from my iPhone

From: **Gene Locks** <glocks@lockslaw.com>
Date: Wed, Aug 30, 2017 at 3:55 PM
Subject: Re: NFL
To: Chris Seeger <CSeeger@seegerweiss.com>
Cc: David Langfitt <dlangfitt@lockslaw.com>, Weiss <sweiss@anapolweiss.com>, Scott George <sgeorge@seegerweiss.com>

Chris:

This will be a frank email, as we appreciate the frankness of your recent emails to us.

1. We always assume that anything we say to anyone, whether our clients or not, will be "reported beyond our group." For that reason and others we never say anything to anyone that is not both truthful and accurate.

2. We would welcome the opportunity to bring all of our concerns to your attention and have been extremely frustrated that we have been unable to do so. We have been seeking a meeting or phone call with you for over a year, and you have evaded or cancelled all meetings and calls we have sought. We want to work with you, and believe it would benefit the entire class if we could work together and present a unified front with the Court, but we believe you have systematically evaded every request we have made.

3. Although neither our firm nor the Podhurst Firm are co-lead counsel, we feel strongly that as class counsel we have responsibilities under the Settlement Agreement and we could play a valuable role in effectively implementing the settlement for the good of all. We would like to engage in that role with you.

4. Because we are class counsel and because at least some people seem to believe that we have a better understanding of the settlement agreement and of the medicine than others, we receive an overwhelming number of calls. If a claimant or lawyer complains about the delays in claim resolution or scheduling of exams, we invariably tell them that this is the early part of the process (which it is), and there are things to work out, but that the issues will be worked out, claimant by claimant.

5. We have no idea what you are talking about when you allege without specifics that we have spread "misinformation" about the settlement agreement. We have never spread any misinformation at all about anything to any lawyers or clients. We want this settlement to succeed. I know you do too, and we see the hard work all Seeger Weiss lawyers are doing every day. We commend you and them for it.

6. Your vague reference to Fred Willis makes no sense to us. We represent him in a single claim and for no other purpose, and you know that. When we speak to him, which is rare, we speak to him solely about his claim, nothing else. His claim is currently delayed based on the well-known affidavit issue, because the corroborating third-party affidavit in his claim was dated

after the date of diagnosis provided by the diagnosing physician (Kirk Daffner of Harvard), but it was considered and referenced by Dr. Daffner in a subsequent diagnosing statement. The fact that this constitutes an alleged deficiency is absurd.

7. Our position on that issue is set forth in a letter (copied to the claimant) to BrownGreer who, by the way, we think is doing an excellent job, including each and every claims representative, who promptly, responsibly and thoughtfully address each and every issue that arise with our claims. You can quote me. If you'd like BrownGreer to attend any call or meeting, we welcome that.

8. Does our position on the "affidavit" issue set forth a concern about the implementation of the Settlement Agreement? Yes, it does, in a well-informed writing to which Seeger Weiss has had access for many months. There are other concerns as well, many of which are also set forth in letters to BrownGreer for individual claimants, and those letters most likely have been read by Scott and Mike (who, by the way, we think are honorable, thoughtful, and hardworking lawyers with whom we'd be privileged to work). We've offered to help them directly in their dealings with NFL counsel (on, for example, the affidavit issue), but have never heard back.

9. David and I are available anytime for a phone call or a meeting with or without BrownGreer, and we'd be pleased to include Scott and Mike in that call or meeting. We have high regard for both of them. We believe that the plaintiffs' side of this process should be unified in every respect. But that's difficult to do when you won't call me back, won't respond to my emails, and won't meet with me.

10. I also do not think it's useful to send a vague and sarcastic email in response to one filing we've made to the Court that shows we'd like an opportunity to be heard. If you'd like to work with us, we'd welcome the opportunity. We are on the same side. We have a knowledge and perspective about these cases, the settlement, and the science that few have, and we think we can help the efforts of everyone, including Seeger Weiss.

11. You have left the ball in our court. Thank you. We want a call or meeting in the next seven days. Please provide me with dates and times when you can meet or speak. We have much to discuss. I no longer work 24/7, only 24/6.

Many thanks for your email of this morning. We welcome a meaningful dialogue and working relationship.

Very truly yours,

Gene

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From: **Gene Locks** <glocks@lockslaw.com>
Date: Fri, Sep 1, 2017 at 2:15 PM
Subject: Re: NFL. Administration issues.
To: Chris Seeger <CSeeger@seegerweiss.com>
Cc: Steven C Marks <smarks@podhurst.com>, Sol H Weiss <sweiss@anapolschwartz.com>, Scott George <sgeorge@seegerweiss.com>, Michael Rosenberg <MRosenberg@seegerweiss.com>, David Langfitt <dlangfitt@lockslaw.com>, PETER PRIETO <PPrieto@podhurst.com>, "AARON S. PODHURST" <APODHURST@podhurst.com>, "RICARDO M. MARTINEZ-CID" <RMartinez-Cid@podhurst.com>, Steven Rosenthal <srosenthal@podhurst.com>, Matt Weinshall <mweinshall@podhurst.com>

Chris and Steve: I too will be at the meeting on the 8th. I'm interested in discussing implementation issues only. Other issues can wait until another time. In the meantime, I will provide in writing a list of issues (and possible solutions) that will improve the settlement for the benefit of all class members. Best, Gene

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sender of the delivery error by replying to this message, and then delete it from your system. Thank you.

From: David Langfitt [mailto:dlangfitt@lockslaw.com]
Sent: Thursday, October 12, 2017 1:34 PM
To: Scott George; Michael Rosenberg; Chris Seeger
Cc: Steven C Marks; Matt Weinshall; Gene Locks; Weiss
Subject: Phone calls and meetings

Chris, Mike and Scott:

You agreed that we would be included in all future calls and meetings with NFL counsel and BrownGreer. That agreement was in early September when we met at your office in New York. Since then, we've never been invited to any call or meeting.

We asked to be included in the meeting on September 19. You advised against that on the grounds that the negotiations were somehow delicate and you did not want to bring in other class counsel. We deferred.

Since the 19th, there have been several phone calls with NFL counsel and BrownGreer, but we have never been informed of the calls or been invited to join them. We have also never received any reports about the calls.

This is not consistent with the agreement in September. When is the next call and what is the call in number and passcode? We expect to participate.

David

David Langfitt
215-893-3423-w
610-787-1706-c

From: Scott George <sgeorge@seegerweiss.com>
Date: Thu, Oct 12, 2017 at 2:02 PM
Subject: RE: Phone calls and meetings
To: David Langfitt <dlangfitt@lockslaw.com>, Michael Rosenberg <MRosenberg@seegerweiss.com>, Chris Seeger <CSeeger@seegerweiss.com>
Cc: Steven C Marks <smarks@podhurst.com>, Matt Weinshall <mweinshall@podhurst.com>, Gene Locks <glocks@lockslaw.com>, Weiss <sweiss@anapolweiss.com>

David,

I believe that we agreed to have calls among class counsel in advance of or around the weekly calls with the administrators and the NFL. For various reasons, some of these calls have not proceeded as scheduled (for example on Columbus day). We are happy to provide updates and get your input, but are not going to start including new people in these calls.

Are you all available for a call on Monday at 1 ET? As we discussed, we will forward that week's agenda, typically received late Sunday night, in advance of our call.

Scott George
Seeger Weiss LLP

EXHIBIT I

MEMORANDUM
11-06-2017

FROM: Gene Locks
David D. Langfitt

TO: Orran Brown
Roma Petkauskas
David Smith

Re: NFL Settlement Implementation

This addresses the systemic problem with the implementation of the NFL Players Concussion Settlement Agreement. We provide below twelve examples of how that problem has delayed valid claims, benefited the NFL, and caused discontent among the retired players.

The systemic problem is the NFL's incessant micro-management of the process and its delay and denial by refusing to agree on disputed issues with Seeger Weiss ("Seeger"). The result is that the majority of pre-effective date claims, particularly dementia claims, are subject to indefinite delay. Even on a case-by-case basis, the NFL refuses to agree on a just result.

Below are twelve examples causing undue delays Locks Law Firm ("LLF") believes arise from NFL's micro-management and refusal to agree to practical and just solutions that will avoid delay and confusion. LLF also offers its brief solution to each example. We seek to be brief here, but will provide a more fulsome position and greater detail on each of these examples if asked.

EXAMPLES OF THE SYSTEMIC PROBLEMS

1. **The Affidavit Issue**. The now notorious third-party corroborating affidavit issue has produced unfounded deficiencies and delays in almost every pre-effective date dementia claim. NFL Counsel and Seeger decided long ago that an affidavit that corroborates functional impairment in the player in connection with a dementia claim must be dated before or during the date of diagnosis. Nothing in the Settlement Agreement supports this "Affidavit Rule," and that fact has been laid bare by nearly every lawyer who has submitted a dementia claim to date.

> **LLF Solution**: The Affidavit Rule is not warranted, not supported by the Settlement Agreement, and an unannounced amendment to the Agreement. The Court or Special Master should strike it on that basis.

2. **The Functional Impairment Requirement.** Under the Agreement, a pre-effective date diagnosis needs no corroborating affidavit. If, in the opinion of BrownGreer, there is sufficient indicia of reliability with respect to the diagnosis (a term LLF has set forth in many letters that respond to alleged deficiencies), then BrownGreer can deem the functional impairment criteria satisfied, and no corroboration is needed.

> **LLF Solution**: The Court or Special Master should issue an Order that BrownGreer has the authority to make these decisions. If the NFL does not agree in any given case, NFL can appeal the award.

3. **Applying the Strict BAP Criteria to Pre-effective Date Claims.** The NFL Counsel and Seeger instructed BrownGreer to deem deficient all pre-effective date claims if they do not conform to the literal requirements of the BAP criteria. That standard of review is contrary to the Agreement. It is not how pre-effective date claims are reviewed by the AAP under section 6.4(b) of the Agreement. It therefore cannot be how BrownGreer reviews pre-effective date claims. This has created a flood of purported deficiencies and delays, particularly for dementia claims.

> **LLF Solution**: The Court or Special Master should instruct BrownGreer to follow the AAP standard of review under 6.4(b) of the Agreement. If the NFL wants to appeal individual cases as not meeting that standard, it can do so.

4. **The AAP's Standard of Review**. NFL Counsel has tried to impose on the AAP (through appeals and otherwise) a different standard of review that is contrary to the language set forth in section 6.4(b) of the Settlement Agreement. The NFL has argued that a pre-effective date diagnosis must be "generally equivalent" to the BAP criteria. That is not true and not within section 6.4(b), which states that the AAP member is to review the diagnosis based on principles generally consistent with the BAP criteria, but the diagnosis does not have to use the same criteria or documentation requirements as the BAP.

> **LLF Solution**: The Court or Special Master should issue an Order in consultation with BrownGreer that clearly and unequivocally sets forth the proper standard of review and leaves to the judgment of the AAP member the decision whether to approve or deny a claim.

5. **The Downgrading of a Claim**. NFL Counsel and Seeger instructed the AAP that it could not use its own judgment to grant a monetary award for a lesser diagnosis if the medical records supported the decision. This is known as the "downgrading" of a claim. This is unfair to the players and prevents AAP members from using their own medical judgment.

> **LLF Solution**: The Court or Special Master should issue an Order that the AAP may use its sound judgment under the proper standard of review to decide whether the medical records in any pre-effective date claim support a greater or lesser qualifying diagnosis.

6. **Incapacity of Diagnosing Physician**. This is persistent problem under section 8.2 and 8.3. There are many instances where the diagnosing physician is unavailable because he/she does not live in this country, no longer practices medicine, is too infirm, or is legally restrained from signing a DPC. But the doctor is not dead or deemed incompetent by a court of law. The NFL refuses to agree to any practical solution that is quick and simple. In several instances, players were diagnosed long ago by a major university neurologist and placed on the 88 Plan. Even in those cases, the NFL delayed any agreement for five months and then insisted that sending the players through the BAP and to an MAF physician was the only thing NFL could agree to.

> **LLF Solution**: Allow BrownGreer the authority to waive the signature requirement if in BrownGreer's judgment (based on an indicia of reliability test) the diagnosis is valid. If the NFL disagrees with BrownGreer's assessment, it can appeal the award. If the player disagrees, he can appeal the denial.

7. **The Raw Scores**. NFL has instructed BrownGreer to gather all raw scores from every pre-effective date neuropsychological test. This is unnecessary and should be reserved only for claims where BrownGreer thinks there is a colorable basis to question the accuracy or validity of the neuropsychological work.

> **LLF Solution**: The Court or Special Master should instruct BrownGreer that it may seek raw scores if, in its judgment, it believes it has questions about the quality or validity of the neuropsychological testing in any given case. If the NFL has the same questions regarding any given claim, it can use its audit rights to seek the raw scores.

8. **The NFL's Actuarial Report**. NFL has instructed BrownGreer to use an NFL actuarial report as valid data to challenge and investigate pre-effective date claims. The NFL's report cannot be used for any purpose. It was created for the NFL, and the NFL paid for it in an attempt to convince the Court not to uncap the Settlement and that the Monetary Award Fund will never exceed the original $675 million. It is biased, based on limited data, and wholly unreliable for any medical purpose.

> **LLF Solution**: The Court or Special Master should instruct BrownGreer that it may not use the NFL actuarial report for any purpose.

9. **Taking the Full Thirty Days**. The NFL delays a full thirty (30) days before revealing whether it will file an appeal of a monetary award. NFL can surely decide quickly which monetary awards it will not appeal. If NFL moves with greater haste, the player's Award can move more quickly through the payment process.

> **LLF Solution**: Narrow the time to 10 days for the NFL to provide a list to BrownGreer of monetary awards it will not appeal.

10. **Payment for a Lesser Diagnosis and a Simultaneous Appeal**. The NFL and Seeger cannot agree on whether a retired player may accept a monetary award, receive payment for that award, and then appeal aspects of the qualifying diagnosis that the AAP or BrownGreer disallowed.

LLF Solution: The Court or Special Master should issue an Order that this kind of partial appeal is allowed, and the player may receive the lesser monetary award while his appeal for a greater award is pending.

11. **Co-Morbidity**. In its appeals, NFL Counsel has asked the Special Master to disallow Alzheimer's Disease and Parkinson's Disease claims on the grounds that there can be no co-morbidity and all possible co-morbidities must be ruled before a diagnosis can be made. The NFL's position is contrary to science. *See e.g., Clinicopathological Evaluation of Chronic Traumatic Encephalopathy in Players in American Football*, Journal of the American medical Assn., page 366, (2017). Co-morbidities are common in this population; autopsy results prove it.

LLF Solution: The Court or Special Master should issue an Order that a finding of a co-morbidity in any qualifying diagnosis is not a basis to deny the claim.

12. **Earliest Date of Possible Diagnosis**. There are claims that have arisen and will arise where a neurologist has in her or his possession medical records that show the manifestation of a qualifying disease at an earlier date that the date of encounter. On information and belief, NFL Counsel has taken the position that those records cannot serve as the basis for dating the qualifying diagnosis before the date of encounter with the neurologist signing the DPC. This is unfair to the player and contrary to medical practice.

LLF Solution: The Court or Special Master should issue an Order that allows both BrownGreer and the AAP the authority to consider the earlier medical records and approve the claim on the earlier date if in their judgment, the diagnosis for that earlier date is reliable.

GENE LOCKS